

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



FOR THE PERIOD
FROM JULY 1, 1967
THROUGH SEPTEMBER 30, 1967

VOLUME 128

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From July 1, 1967

Through September 30, 1967

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1967 through September 30, 1967, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION

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Executive Assistant

John G. Bookout
Chief Assistant Attorney General

Assistant Attorneys General

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Finance:

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Agriculture and Industries:

George O. Miller

OPINIONS

July 10, 1967

Hon. A. Melvin Bailey
Sheriff, Jefferson County
Jefferson County Courthouse
Birmingham, Alabama

Sheriffs — Counties — Jefferson County — Merit System.

1. Authority of sheriff of Jefferson County, Alabama to employ or appoint deputies discussed.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of June 1, 1967 is as follows:

"As Sheriff of Jefferson County, Alabama, I respectfully request your opinion as Attorney General of Alabama concerning the operation of Jefferson County vehicles by 'Reserve Deputy Sheriffs' of Jefferson County.

"I have appointed a number of special deputy sheriffs who are willing to serve on call in emergency situations, and at other times when needed. These deputies serve voluntarily without pay of any sort and are called by me 'Reserve Deputies.' When possible they always accompany a regular deputy who of course drives any county vehicle used. In some instances it is impossible to send them with a regular deputy and it is desirable to send them in a sheriff's department county vehicle.

"We respectfully request your opinion on the following questions:

"1. Is it lawful for 'Reserve Deputies' while on special assignment by the Sheriff to use and operate county vehicles?

"2. Is the use of county vehicles whether marked or unmarked by 'Reserve Deputies' under orders and direction of the Sheriff, a violation of Section 160 of Title 62 of the 1940 Code of Alabama as revised in 1958?"

You have asked me two questions, which are set out above, but, before answering those two questions, I must answer the primary question of whether or not the sheriff of Jefferson County, Alabama has the authority to appoint "special" or "reserve" deputies in said county.

Title 54, Section 3, Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part, as follows:

"In all counties of the state of Alabama in which the sheriff is not on a salary basis under and by virtue of a constitutional

amendment, the sheriff of such county must have one chief deputy * * * "

Please note that this section specifically exempts sheriffs on a salary basis, and therefore, any authority for appointing deputy sheriffs would have to be found elsewhere.

By Constitutional Amendment Number II, duly adopted November 16, 1912, and Act No. 468, p. 374, Local Acts of Alabama 1915, the sheriff of Jefferson County, Alabama was placed on a salary basis and is, presently, on such basis.

Act No. 468, supra, also authorized the Board of Revenue of Jefferson County, Alabama to provide for deputies and their compensation, but left the selection of the deputies to the sheriff. However, this Act was not brought forward into the 1940 Code, and, therefore, it was repealed. **Jefferson County v. Dockerty**, 30 So. 2d 474.

In July 1945, the Legislature created a Civil Service System for city and county employees of Jefferson County by Act No. 248, Acts of Alabama 1945, page 376.

The Act creating the Jefferson County Civil Service System still permits the sheriff to select a deputy sheriff, but he must choose him from a list of three eligibles submitted by said Personnel Board. **Jefferson County v. Dockerty**, supra; and an opinion of this office to the Hon. Holt A. McDowell, Sheriff, Jefferson County, Alabama, under date of August 21, 1956.

The effect of these Acts and Constitutional Amendment is to limit the authority of the sheriff of Jefferson County, Alabama to appointing deputy sheriffs from a register compiled and promulgated by the Civil Service System of Jefferson County, Alabama.

Furthermore, in the absence of any statutory law permitting the appointment of "special" or "reserve" deputies — and I have found none — it is my opinion that the sheriff of Jefferson County, Alabama has no authority to appoint deputy sheriffs other than pursuant to the Legislative directives set out in Act No. 248, supra.

Consequently, my opinion that you have no authority to appoint "special" or "reserve" deputy sheriffs obviates any necessity to answer the questions set out in your letter to me of June 1, 1967.

Nothing in this opinion should be construed as preventing the sheriff of Jefferson County, Alabama from organizing a posse comitatus in times of emergency, such as riots, unlawful assemblies, etc., pursuant to the authority contained in Title 15, Section 398, Code of Alabama 1940, as Recompiled 1958.

Very truly yours,

MacDONALD GALLION
Attorney General

July 11, 1967

Hon. William F. Black

Attorney

Alabama Public Service Commission

State Office Building

Montgomery, Alabama

Alabama Public Service Commission.

1. Green cross ties are construed to be lumber within the meaning of Title 48, Section 301(2) (A-3), Code of Alabama 1940, as Recompiled 1958.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of June 12, 1967 is as follows:

"We are confronted with the question of whether or not green cross-ties, in the rough moving from a sawmill to a treating plant such as the Koppers Company, is exempt under Section 301(2) of Title 48, Code of Alabama.

"The product in question being cut from the original timber is very close to 'lumber' in that it has received no processing other than the original 'cut' from the forest."

Title 48, Section 301(2) (A-3), Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part, as follows:

"* * * also motor vehicles if engaged in hauling milk, livestock, coal, logs, lumber, poles, pulpwood, cotton in bales, cottonseed, fertilizer, peanuts, potatoes, or any other agricultural commodity of any kind (but not manufactured products thereof); * * *"

In my opinion "green cross ties," and by this I mean the ties that have been cut into certain sizes at a sawmill but have not been impregnated with a preservative, are just as much "lumber" as is a green two-by-four that has not been dried nor planed.

Therefore, I am of the opinion that green cross ties come within the definition of lumber as that word is used in Section 301(2) (A-3), *supra*.

Very truly yours,

MacDONALD GALLION
Attorney General

July 11, 1967

Honorable W. M. Cousins, Jr.

Judge of Probate

Elmore County

Wetumpka, Alabama 36092

National Guard — Military Department — License Tags —
Exemptions.

Commissioned officers of the active National Guard of Alabama are entitled to a free license tag for each passenger vehicle which they own or operate.

Opinion by Chief Assistant Attorney General Bookout.

Dear Sir:

Your request for an official opinion dated May 16, 1967, is as follows:

"It will be most appreciated if you will give me a ruling on the following question:

"'Are Alabama National Guard Officers entitled to more than one free license tag each?'"

"In other words, if such officer has more than one automobile, is he entitled to free license tags for each such automobile."

Title 35, Section 101, Code of Alabama 1940, provides, in part, as follows:

"§ 101. Exemption from state toll bridge and tunnel fees, and automobile license fees . . . There shall be exempt from the operation of the privilege or license tax and registration fee now or hereafter to be levied on automobiles and motor vehicles owned and operated by the federal government or by officers and enlisted men actually serving in the United States army who are assigned by the war department as instructors with the national guard of Alabama and all commissioned officers of the active national guard of Alabama"

If the Legislature had intended to limit the above exemption to only one passenger vehicle, it would have clearly spelled out that intention. Instead, the exemption as it applies to passenger vehicles owned and operated by commissioned officers of the active National Guard is clearly worded in the plural.

It is therefore my opinion that commissioned officers of the active National Guard of Alabama are entitled to a free license tag for each passenger vehicle which they own and operate. Also, see Quarterly Report of Attorney General, Volume 113, Page 75.

Very truly yours,

MacDONALD GALLION
Attorney General

July 12, 1967

Honorable Earl D. James

Mayor

City of Montgomery

City Hall

Montgomery, Alabama

Municipal Licenses — Bail Bonds — Insurance Companies and Their Agents.

1. Under the provisions of Title 37, Section 736, Code of Alabama 1940, Recompiled 1958, the authority of Municipalities to levy license or privilege taxes on qualified insurance companies and their agents, who are authorized by the State Department of Insurance to make surety and other bonds, is limited to those license or privilege taxes specifically provided for in Section 736.
2. Such an insurance company and its agents who are duly qualified with the Department of Insurance to do a general bonding business in this state, and who have paid the licenses authorized to be levied under Title 37, Section 736, Code of Alabama 1940, Recompiled 1958, are not required to pay the license which is levied on Bondsmen under Section 67 of the License Code of the City of Montgomery.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office bearing date of April 13, 1967, is as follows:

"The License Code of the City of Montgomery, Alabama, now in effect, provides in Section 67 as follows:

" 'Bondsmen. Persons who make judicial or court bonds, appeal appearances or otherwise for a consideration\$250.00'

"The City of Montgomery attempted to levy this license against the Alabama Bonding Company, listed as doing business in Montgomery, with offices at 112 North Perry Street, and met with opposition and a contention that the license was not due either by the bonding company or by David D. Livingston, who does business as David D. Livingston Agency, at the same address. I am attaching hereto a statement submitted by Mr. James H. Horn to the City Comptroller which purports to outline and cite the authority for the refusal to pay the license.

"Mr. Horn has advised the City that this problem has arisen in several other municipalities and that he has been able to satisfy the attorneys or license personnel of such municipalities that their municipality licenses are not applicable.

"I do not have available the State Department of Revenue opinion mentioned in the letter.

"I respectfully request your giving the City of Montgomery an official ruling as to the applicability of the quoted license provision in view of the matters outlined in the attached letter."

Your question is answered to the effect that the license levied under Section 67 of the License Code of the City of Montgomery, is not, under the circumstances, applicable to the Alabama Bonding Company which is the agency trade name used by David D. Livingston Agency, and which is an agent in making surety and other bonds, including bail bonds, of the Resolute Insurance Company.

The City of Montgomery, like other municipalities, derives its authority to levy privilege and license taxes from the Legislature, and has, in this respect, only such powers as the Legislature has given it.

Section 733 and 735 of Title 37, *supra*, are general statutes authorizing municipalities to levy and collect business, trade and professional licenses within their police jurisdiction and within their corporate limits, respectively, and to promulgate ordinances for such purposes.

Section 736 of Title 51, *supra*, is a special provision relating only to the licensing of insurance companies, and their agents, and which limits the powers of municipalities to levy licenses on insurance companies, and their agents, except as is specially provided therein. As it is a special provision, it takes precedence over Sections 733 and 735 and the general provisions of Title 37, Chapter 14, Article 3, *supra*, **Downing vs. City of Russellville**, 241 Alabama 494, 3 So. 2d 34; and **Herring vs. Griffin**, 211 Alabama 225, 100 So. 202, among others.

In this respect Section 736 provides, in material part, as follows:

"No license or privilege tax, or other charge for the privilege of doing business, shall be imposed by any municipal corporation upon any insurance company, other than fire and marine insurance companies, doing business therein **or its agents**, which shall exceed for the company and its agents the following amounts:" (Emphasis supplied)

Section 736 then proceeds to confine the license powers of municipalities in the case of insurance companies (other than fire and marine) and their agents to the tax measured by the population of the city or town involved and the premium tax both of which are specifically provided for therein.

The applicable provisions of Section 67 of the License Code of the City of Montgomery are set out in your letter, which is quoted above.

The term "insurance company" is defined under Title 51, Section 812, *supra*, and the definition is a very comprehensive one including surety and guaranty companies and "any other company charging a premium for contracts entered into * * * ."

The definition of an "insurance company" as is contained in Title 28, Section 40, Code of Alabama 1940, Recompiled 1958, for the purpose of the insurance laws of this state, includes "all corporations, associations, partnerships, or individuals engaged directly or indirectly as principal in any business of insurance."

As a matter of administrative interpretation of these statutes, certain officials of the State Department of Insurance have informed me that they consider them to include insurance companies which have qualified with that department to engage in a general bonding business, including the making of surety, bail and other bonds. It is also noted in this connection that this office has ruled on at least three occasions that the requirements of Title 15, Section 201, Code of Alabama 1940, to file a \$10,000 bond and register with the Judge of Probate of the county in which the company or person is engaged in making bail bonds are not applicable to insurance companies which are qualified with and licensed by the State Department of Insurance. See opinion of the Attorney General reported in Quarterly Reports of the Attorney General, Volume 74, Page 35, and informal opinions of this office to Hon. David E. Dunn, Judge of Probate, Montgomery County, Alabama, dated February 23, 1956, and to Hon. William S. Weatherly, Commissioner of Public Safety, City of Anniston, Alabama, dated July 24, 1956.

Mr. Horn in his letter to the City Comptroller of April 7, 1967, a copy of which you have attached to your letter, states that the insurance company has paid the premium tax imposed by the City of Montgomery and also the agency tax also imposed by the City. He obviously has reference in this respect to license ordinances promulgated by the City of Montgomery under the authority of Title 37, Section 736, *supra*, on insurance companies which licenses are measured by the gross amount of premiums received in the City by the insurance company, and the tax on such companies which is computed on this basis of the population of the municipality involved. Mr. Horn also states in his said letter that the Alabama Bonding Company is but the agency trade name used by David D. Livingston Agency and all forms of surety executed by that agency are made under individual Powers-of-Attorney given to it by the Resolute Insurance Company, for which the insurance company is duly licensed and regulated by the Department of Insurance. The fact that the Resolute Insurance Company is a qualified insurance company with the State Department of Insurance, with authority also to make surety, bail and other bonds, and the David D. Livingston Agency is an agent of said insurance company has also been verified by officials of said department. The David D. Livingston Agency then will be treated for the purpose of this opinion as the agent of the Resolute Insurance Company, and as being so licensed and regulated by the State Department of Insurance.

In this connection Section 736 of Title 37, *supra*, also has the following provisions:

" . . . Upon the payment or tender of the amount specifically named in said schedule to any city or town, any insurance

company, other than fire and marine insurance companies, authorized to do business in this state, shall be permitted to do business in said city or town **through its agents, resident or soliciting, duly appointed in writing which agents shall not be subject to or required to pay any privilege or occupation tax to said city or town for representing said company or soliciting business for it.**" (Emphasis supplied)

The foregoing being considered, and as the premium tax and the other tax based on the population of the city authorized to be levied by the city under Title 37, Section 736, supra, have obviously been paid, the city is not authorized, and in fact is expressly prohibited from collecting from said insurance company or its agent the license on bondsmen under Section 67 of the License Code of the City of Montgomery, or any other additional license tax relating to said bonding or insurance business carried on by said agent for the insurance company.

Yours very truly,
MacDONALD GALLION
Attorney General

July 13 ,1967

Honorable Leonard Beard
Director

Planning and Industrial Development Board
State Office Building
Montgomery, Alabama

Bids — Funds — Industrial Development.

1. Under the statute requiring competitive bidding in the expenditure of public funds by certain schools, local governments, and agencies preference may not be given American products where foreign products of the same quality may be purchased at a lower price.

Opinion by Assistant Attorney General Gish.

Dear Mr. Beard:

Your request for an official opinion dated June 30, 1967, is as follows:

"The price of foreign steel and steel products on the local market is consistently lower than that of American-made steel.

"An excerpt from Act 217 enacted by the 1967 Special Session of the Alabama Legislature reads as follows:

"The awarding authority in the purchase of or contract for personal property or contractual services shall give preference,

provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms or corporations.'

"We would appreciate an opinion from your department as to whether Act 217 would, in fact, preclude the purchase of American-made steel and steel products where this price differential exists."

The statute to which your request refers is Act No. 217, Acts of Alabama 1967, approved May 10, 1967.

Section 9 of said Act reads, in part, as follows:

" . . . When purchases are required to be made through competitive bidding, awards shall be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges, and the dates of delivery "

Another portion of Section 9, *supra*, which is quoted in your request, authorizes an awarding authority to give preference to products manufactured in Alabama or sold by Alabama businesses where there is no sacrifice in price or quality. There is no other provision of Act No. 217, *supra*, which allows that preference be given any product solely because of the place of manufacture or sale. I know of no other statute or principle of law authorizing that such preference be given.

Therefore, I am of the opinion that under the facts presented preference may not be given American Steel over foreign steel where the purchased thereof is controlled by Act No. 217, *supra*.

Very truly yours,
MacDONALD GALLION
Attorney General

July 17, 1967

Honorable J. O. English
Judge of Probate, Coffee County
Elba, Alabama

Counties — Contracts — Bids — Statutes.

1. Act No. 217, approved May 10, 1967 (Special Session 1967), covers the general field of requiring bids for labor, services, material, supplies, etc., made by or on behalf of certain state and local school authorities, and local county and city governing bodies and instrumentalities thereof.
2. Those provisions of Act No. 217, *supra*, which may be in conflict with the provisions of former general, special or

local acts supersede such provisions of the former general, special or local acts. Those provisions of former general, special or local acts which are not inconsistent with the provisions of Act No. 217, *supra*, remain in full force and effect where applicable.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion of this office, dated June 26, 1967, is as follows:

"We, in Coffee County, have a copy of a new bid law whereby it appears that if a purchase is \$500.00 or more, we would have to have, before the purchase is made by the Commissioners Court, where possible, three bids.

"I am sure that you are aware of the fact we have a local law in our County, by which we are compelled to receive three bids, where possible, for items \$200.00 or more. Now one of our problems is that we cannot arrive at the conclusion of whether or not this \$500.00 bid law counteracts or cancels our local law. "It also appears from this bill that it would be necessary before buying gasoline or motor fuel to be used in road implements, also bids should be received for the purchase of lumber, unless it was an emergency. We do not thoroughly understand all the wording of this bill, therefore we will greatly appreciate your opinion as to these different purchases."

In answer to your inquiry, it is my opinion that Act No. 217, approved May 10, 1967 (Special Session 1967), the recently enacted bid law, supersedes former general, special or local acts insofar as the same may be in conflict.

As a general rule, a general law does not by implication amend or repeal a special or local law, but it may do so in order to carry out the intent of the Legislature. — **Personnel Board of Mobile County v. Mobile**, 264 Ala. 56, 84 So. 2d 365. However, where there is a clear general intent of the Legislature to establish uniform system throughout the state, the presumption is that special or local statutes are repealed by general statutes. — **Shepherd v. Clement**, 224 Ala. 1, 141 So. 255, rev (1932) 25 Ala. App. 7, 141 So. 250, cert den after remandment (1932) 224 Ala. 3, 141 So. 256. See 18 Alabama Digest 173, Statutes, Key Number 162. This appears to be the situation in the instant case as Act No. 217, *supra*, covers the general field of requiring bids for labor, services, materials, supplies, etc., made by or on behalf of certain state and local school authorities, and local county and city governing bodies and instrumentalities thereof. We must look specifically to the repealing clause in Act No. 217, *supra*, which provides as follows:

"Section 12. This act shall be cumulative in its nature; however, all conflicting provisions of law are hereby expressly repealed."

Said Section 12, although somewhat ambiguously worded, in my judgment, means that those provisions of Act No. 217, which may be in conflict with the provisions of former general, special, or local acts, supersede such provisions of the former general, special, or local acts. These provisions of former general, special, or local acts which are not inconsistent with the provisions of Act No. 217, *supra*, remain in full force and effect where applicable.

It, therefore, follows in specifically answering your inquiry, that the provision of Act No. 217, *supra*, requiring bids for contracts involving \$500 or more, supersedes the \$200 provision provided for by the local act applicable to Coffee County.

The last paragraph of your letter presents matters which are too general and abstract in nature as to warrant definite answers thereto.

On May 29, 1967, the Department of Examiners of Public Accounts sent to all county governing bodies, etc., "Standard Operating Procedures" to be followed in regard to Act No. 217, *supra*. The information contained therein should serve as a general guide and give you the information you desire in regard to the last paragraph of your letter.

Yours very truly,

MacDONALD GALLION
Attorney General

July 17, 1967

Honorable John W. Starnes
County Attorney
Marshall County
Guntersville, Alabama

Marshall County Special Gasoline Tax — Municipalities —
Local Laws — General Laws.

1. Under Act No. 385 of the 1953 Regular Session, which is Marshall County's special one-cent gasoline tax, the tax is expressly levied on the seller or distributor of the gasoline, and not on the purchaser or the consumer. The tax, therefore, is required to be collected from a seller or distributor who sells gasoline to a municipality located in Marshall County.
2. Acts Nos. 223, 224 and 225 of the 1967 Special Session are general laws of state-wide application which relate to the distribution and allocation of state licenses and state gasoline and motor fuel taxes. Said Acts do not repeal or affect Act No. 385 of the 1953 Regular Session which is a special and local law applicable only to Marshall County.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office bearing date of March 31, 1967, is as follows:

"1. The question has arisen under Marshall County's One-Cent Gas Tax which is Act Number 385 of the 1953 Regular Session of the Alabama Legislature as to whether or not the County could collect the one-cent tax from the municipal governments. At present two of the oil companies collect the one-cent tax from two of the cities located in the County, however, they do not collect the tax from other cities. Therefore, I would ask you to render an opinion as to whether or not under Act Number 385 **Marshall County** can charge and collect the one-cent gas tax to municipal corporations within the County.

"2. Also, does the recent reallocation of the Gasoline Funds (under House Bills 219, 220 and 221) render null and void this Act (Act 385 Acts of 1953) wherein Marshall County is given the authority to levy and collect a one cent (1c) tax for the Farm-to-Market Program for Marshall County. In other words, would the recent Acts of the Legislature in anyway affect Act 385, Acts of 1953?"

1. You actually mean, I suppose, in asking your first question, can the tax be collected on a sale of gasoline by a seller or a distributor to a municipality in your County. Your question then will be so treated.

Your first question is answered in the affirmative, and to the effect that Marshall County can, and is required to collect the tax under Act No. 385, *supra*, from the distributor or seller, when selling to cities or other instrumentalities of the state in Marshall County.

It is true that these municipalities, like the county itself, are instrumentalities of the state government and as such are ordinarily immune or exempt from taxation. However, under Act No. 385, the local gasoline tax involved is expressly levied on the seller or distributor, and not the purchaser or consumer, and the municipalities are not, under the Act, the taxpayer. Act No. 385 of the 1953 Legislature (Acts 1953, Volume 1, Page 456) is a local law which is applicable only to Marshall County. Section 1, the levying section of the Act, is as follows:

"Section 1. The board of revenue, court of county commissioner, or like governing body of Marshall County is authorized to levy a privilege license tax, not exceeding one cent per gallon, on all persons, corporations, co-partnerships, companies, agencies, associations, firms, and refiners selling, delivering, withdrawing from storage or keeping in storage for sale and delivery within the county, gasoline, naphtha, and other liquid mo-

tor fuels, or any device or substitute therefor commonly used in internal combustion engines; but not including, however, kerosene, fuel oil, or crude oil commonly used for lighting, heating, or industrial purposes." (Emphasis supplied.)

The tax then is levied on the seller or distributor, and is paid by him over to the county upon his "selling, delivering, withdrawing from storage or keeping in storage for sale and delivery within the county," gasoline. Moreover, the Act does not require the seller or distributor as the taxpayer to pass the tax, as such, down to the purchaser or consumer. As a matter of economics then, the paying of the tax by the seller or distributor as the designated taxpayer under the Act merely tends to increase the price of the gasoline to the purchaser or consumer and does not amount to a payment of the tax by the purchaser or consumer. The seller or distributor simply adds the equivalent of the amount of the tax to the price of the gasoline as he would any other expense.

Where similar situations have arisen in regard to the so-called Lube Oil Tax levied under Title 51, Section 630, Code of Alabama 1940, Recompiled 1958, which is also levied on the seller or distributor, this office has ruled that the selling of Lube Oil to instrumentalities of the state would not relieve the seller or the distributor under the circumstances from paying the tax. Quarterly Reports of the Attorney General, Volumes 92 and 14, Pages 16 and 70, respectively. See also **State Tax Commission vs. County Board of Education of Jefferson County**, 235 Ala. 388, 179 So. 197, and **State vs. City of Montgomery**, 228 Ala. 93, 151 So. 856.

2. Your second question is answered in the negative, and to the effect that House Bills 219, 220 and 221 which are now Acts Nos. 223, 224 and 225, respectively, of the 1967 Special Session of the Legislature, do not in any respect repeal or affect Act No. 385 of the 1953 Regular Session or the distribution of revenues derived therefrom. Act No. 223 relates to the state licenses on motor vehicles as levied under Title 51, Chapter 20, Article 8, Code of Alabama 1940. Act No. 224 provides for the distribution of the state tax on gasoline and other motor fuels under Title 51, Chapter 20, Article 5, Code of Alabama 1940. Act No. 225 is referred to as the "Bond Bill," and it authorizes the issuance of state road bonds up to 160 million dollars to supplement the matching funds for state highway purposes. Such bonds are to be paid from the proceeds from the state motor vehicle licenses, the state gasoline tax, or that part of it not already pledged to other bond issues, and proceeds from the state motor fuel taxes.

The general rule is that a general law or one having a statewide application does not by implication or otherwise repeal a local or special law. **M & O Railroad Company vs. State**, 29 Ala. 573; **Tucker vs. McLendon**, 210 Ala. 562, 98 So. 797; **Standard Oil Company vs. Limestone County**, 220 Ala. 231, 124 So. 523; **Connor vs. State on Information of Boutwell**, 275 Ala. 230, 153 So. 2d 787; 18 Alabama Digest, "Statutes," Section 162; and 82 C. J. S., "Statutes," Section 298 b, c.

The above rule also seems particularly applicable in this case as it hardly can be said that Acts Nos. 223, 224 and 225, *supra*, cover even the same subject matter as Act No. 385, *supra*.

Very truly yours,
MacDONALD GALLION
Attorney General

July 18, 1967

Honorable Cleon Yates
Commissioner, Motor Vehicle Licenses
Courthouse — P. O. Box 668
Decatur, Alabama

License Taxes — Junk Yards — Junk Dealers.

1. A person who is in the business of buying junked or worn-out automobiles and salvaging same at his place of business and selling the parts, metal, bodies and frames taken therefrom to other junk yards or junk dealers is operating a junk yard and is a junk dealer as is contemplated in Title 51, Section 541, Code of Alabama 1940, Recompiled 1958, and is due to pay the license provided for therein.
2. A person selling automobiles as such, whether new or used, and who is also engaged in purchasing worn-out or wrecked automobiles and in salvaging same and selling the parts taken therefrom, is engaged in business as an automobile dealer and also as a junk dealer, and under the Provisions of Title 51, Sections 838 and 839, Code of Alabama 1940, Recompiled 1958, such person is required to pay both the license under Section 462 of Title 51, *supra*, for engaging in business as an automobile dealer and a license under Section 541 of Title 51, *supra*, for also engaging in the separate business of a junk dealer.
3. Where a person is engaged in buying junked and worn-out automobiles and salvaging same at his place of business and selling exclusively the parts taken therefrom, the selling of such parts as taken from the junked automobiles constitutes one of the functions of a junk dealer's business, and such person would not be required under the circumstances to also purchase the separate automobile accessory dealer's license under Section 465 of Title 51, *supra*, if he has paid the license under Section 541.
4. Where a junk dealer who has purchased the license under Title 51, Section 541, *supra*, also occasionally

buys and repairs wrecked automobiles and sells them as automobiles, he would also be engaged in the business of selling automobiles, and would under Sections 838 and 839 be required to pay both the junk dealer's license under Section 541 and the automobile dealer's license under Section 462 for engaging in said two separate businesses.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office bearing date of June 26, 1967, is as follows:

"I would like to have an opinion from you on the following:

"1. Does an individual who buys wrecked or junked automobiles and strips the parts from them for sale, then sells the body, frame, etc., as junk to a junkyard need a Junk Dealer's License under Title 51, Section 541?

"2. If my first question is answered in the affirmative, would an automobile dealer licensed under Title 51, Section 462 who carries on the above described activities in addition to dealing in and selling automobiles as such, also be required to purchase a Junk Dealer's License under Section 541?

"3. Does such individual also need an Auto Accessory License under Section 465 of Title 51?

"4. Does such individual also need an Automobile Dealer's License under Section 462 if he occasionally repairs a wrecked automobile and sells it as such?

"We would like your official opinion in regard to the above questions at your earliest convenience."

1. The answer to your first question is in the affirmative, and to the effect that the individual described by you in carrying on such activities is operating a junk yard as is contemplated by Title 51, Section 541, Code of Alabama 1940, Recompiled 1958, and is a dealer in junk and due to pay the license provided for in said section.

In referring to persons who salvage worn-out or wrecked automobiles and sell the parts taken therefrom, Words and Phrases, Permanent Edition, Volume 23 A, "junk yard", Page 114, clearly indicates, without any exception, that they are operating what is commonly known as a junk yard and dealing in junk.

"Operation of salvaging, breaking up, burning and storing old automobiles was 'junk yard' within town zoning ordinance. **McKinney v. Riley**, 197 A.2d 218, 221, 105 N.H. 249.

"Defendant, who salvaged and sold usable parts from old automobiles, which remained only temporarily on his lot, and which

were thereafter removed, was maintaining and operating a 'junk yard' or 'salvage yard' within meaning of county zoning ordinance. **Lague v. State**, 113 A.2d 893, 896, 207 Md. 242.

"An automobile salvage business was within the classification of 'junk yards', proscribed in light industrial and commercial zones under a zoning ordinance of town of Montclair. **Mayer v. Board of Adjustment of Town of Montclair, Essex County**, 160 A.2d 30, 33, 32 N. J. 130. ***"

It would make no difference in this respect whether the junk dealer is selling at retail or at wholesale or to other junk dealers. Section 541 makes no distinction between a wholesale dealer and a retail dealer in levying the license. See also Words and Phrases, 2nd Edition, Volume 23A, "Junk Dealer or Merchant", Page 111. Moreover, this office in an opinion to Honorable R. K. Greene, Judge of Probate, Hale County, Alabama, dated July 13, 1962, and relating to the same subject matter (a copy is attached) also treated a person carrying on similar activities as are described by you as operating a junk yard and as a junk dealer.

2. Your second question is answered in the affirmative. The license on junk dealers under Title 51, Section 541, Code of Alabama 1940, Recompiled 1958, covers, of course, a separate and distinct business from the license levied on automobile dealers under Section 462 of Title 51, *supra*.

Where a person is engaged in more than one business Sections 838 and 839 of Title 51, *supra*, require that such person pay the license tax, where there are licenses called for, on each branch of the business or on each separate business engaged in. The only exception to this is where there are provisions of law expressly exempting a person engaged in one business from the payment of another license for engaging in another business or branch of the same business. **State v. Woodham**, 276 Ala. 662, 166 So. 2d 391, 394, **Brown Plumbing, etc., v. McDowell**, 240 Ala. 485, 200 So. 104, Quarterly Reports of the Attorney General, Volumes 116 and 16, Pages 63 and 77, respectively.

There are no such exceptions which would relieve an automobile dealer who has paid the license under Section 462, *supra*, from also paying the junk dealer's license under Section 541, if such person engages in both of said businesses.

Section 462, *supra*, the automobile dealer's license does expressly exempt such a dealer who has paid that license from the payment of the licenses provided in Sections 465-467, 472, 474, and 605 of Title 51, *supra*.

However, it does not excuse one who has paid the automobile dealer's license under Section 462, from also paying the junk dealer's license under Section 541, if he is engaged in both businesses.

3. Where a junk dealer who has paid the license under Section 541 is engaged in purchasing or otherwise acquiring worn-out or wrecked automobiles and salvaging them and selling only the parts taken therefrom, i. e., radios, batteries, tires or any of the other parts taken from

such junked or wrecked automobiles, then it appears that such activities are a part of the junk dealer's business, and come within the scope of the license under Section 541, and the separate automobile accessory dealer's license would not be required.

The purchase or acquisition by the junk dealer of the junked automobiles would under the license statute certainly contemplate his right to salvage and sell the parts taken therefrom as a part of the business of a junk dealer and of operating a junk yard. The selling of such parts when taken exclusively from the junked automobiles seems clearly one of the functions of a junk dealer and a factor of such business rather than a separate business such as the Legislature had in mind in enacting what is now Sections 838 and 839 of Title 51 *supra*.

The foregoing being considered and as the junk dealer's activities in this respect are confined to selling exclusively parts and accessories disassembled from the junked or wrecked automobiles, then the payment of the junk dealer's license would include such activities, and the automobile accessory dealer's license under Section 465 would not be due under the circumstances.

What has been said above would not apply if the junk dealer purchased any of his inventories or accessories new, and sells them new, as distinguished from the parts taken from the junked automobiles. In such a case the sales of the accessories would cease to be a part or function of operating a junk yard and would clearly constitute being engaged in the accessory business, and both licenses would be due. See opinion of this office to Honorable R. K. Greene, Judge of Probate, Hale County, dated July 13, 1962, a copy of which is attached.

If the junk dealer to whom you refer has purchased an automobile dealer's license under Section 462, he would not be required to pay the accessory dealer's license under Section 465 under any circumstances. Where the automobile dealer's license has been paid, Section 462 expressly exempts the automobile dealer from paying the license under Section 465.

4. The answer to your fourth question is in the affirmative.

The business of operating a junk yard or of a dealer in junk does not include the business of selling automobiles as such, even if the automobiles are used automobiles and have to be repaired before being sold. Under the authorities cited above such cars would retain their identity as automobiles even though in need of repair before being resold, and would not be salvage or junk. Words and Phrases, Permanent Edition, Volume 23A, "Junked Automobile," Page 112.

Webster's New International Dictionary, Second Edition, and other standard dictionaries define "junk" when used as a noun to mean "waste" or "refuse"; when used as a verb to mean "to scrap" or to salvage. Thus, junk includes only something which is salvaged or taken from something else, which is too old or too worn out to be used again in the original form. See also Words and Phrases, Permanent Edition, Volume 23A, "Junk," Page 108.

The business of buying and selling junk or operating a junk yard then would be a separate business from selling automobiles as such. Under Sections 838 and 839, *supra*, then where a person is selling automobiles, whether new or used, and also is dealing in worn-out or junked automobiles and selling the parts salvaged and taken therefrom, he would be required to pay both the license under Section 462 and the license under 541.

The fact that the person to whom you refer makes only occasional sales of used automobiles as such, and obviously to make a profit, would still constitute his engaging in the business of selling automobiles aside from his business of dealing in junk. One act by said person in selling automobiles, if coupled with the intent to continue to sell such cars to make a profit, has been held to constitute being engaged in business within the purview of the business license laws of this State. **Blackwell v. Bankers and Shipper Ins. Co. of N. Y.**, 260 Ala. 463, 71 So. 2d. 267; **Keller v. State**, 123 Ala. 94, 26 So. 323, 324; **Abel v. State**, 90 Ala. 631, 633, 8 So. 860; and **Harris v. State**, 50 Ala. 127.

Very truly yours,
MacDONALD GALLION
Attorney General

July 19, 1967

Honorable Louise S. Champion
Tax Assessor

Montgomery County Courthouse
Montgomery 4, Alabama

Taxation — Ad Valorem — Exemption.

Medical Clinics and clinical facilities organized and incorporated under the authority of Act 516, Regular Session 1955, Legislature of Alabama, are exempt from all ad valorem taxes.

Opinion by Assistant Attorney General Burson.

Dear Mrs. Champion:

Your request for an official opinion dated June 13, 1967, is as follows:

"The Medical Clinic Board of the City of Montgomery is assessing two pieces of property namely: The Medical Plaza located in the North East Quarter of the North East Quarter of Section 32, Township 16, Range 18, and The Engleside Nursing Home, located in the North East Quarter of Section 8, Township 16, Range 18.

"I understand that The Medical Plaza rents office space to Doctors, and uses the remaining space for the Clinic. I am

informed that a charge is made to the patients in the Nursing Home.

"The Medical Board has asked for an exemption. I would like your opinion as to whether they are entitled to this exemption."

This opinion appears to be a matter of first impression insofar as the question of exemption of medical clinics and clinical facilities incorporated under the authority of Act 516, Regular Session, 1955, Legislature of Alabama is concerned.

Section 11, Act 516, Regular Session 1955, provides as follows:

"Section 11. The bonds authorized by this Act and the income therefrom, all mortgages executed as security therefor, all lease agreements made pursuant to the provisions hereof, **and all property and the revenue derived from any lease thereof shall be exempt from all taxation in the State of Alabama.** All deeds, mortgages, trust agreements, articles of incorporation, and other documents executed by or delivered to any corporation incorporated under the provisions of this Act shall be exempt from all state, county, municipal, and other taxation in the State of Alabama." (Emphasis supplied.)

The Medical Clinic Board of the City of Montgomery purports to be organized and incorporated according to Act 516, supra, and all information available indicates it is so organized. The request for opinion was accompanied by a copy of Act 516 and the copy of the letter dated February 16, 1966, Dumas, O'Neal and Hayes, Attorneys of Birmingham, Alabama, to The Medical Clinic Board states in part that "Said Lease Agreement, in our opinion, complies with requirements of the aforesaid Act No. 516, as amended, and constitutes ***."

It follows, therefore, that The Medical Plaza and Engleside Nursing Home which are owned by The Medical Clinic Board of Alabama in accordance with Act 516, supra, and leased in accordance with Act 516, supra, are exempt from all ad valorem taxes.

Very truly yours

MacDONALD GALLION
Attorney General

July 20, 1967

Honorable N. E. Dixon, President
Board of Revenue
Marengo County
Linden, Alabama

Bids — Contracts — Counties.

1. Contracts for purchase of gasoline in excess of Five Hundred Dollars (\$500.00) must be let by open and

competitive bidding under the provisions of Act No. 217, Acts of Alabama, Special Session 1967.

2. No purchase or contract shall be divided into parts to avoid competitive bidding by issuing separate purchase orders or contracts for each individual district of a county.

Opinion by Assistant Attorney General Webb.

Dear Mr. Dixon:

I have your letter of June 29, 1967 in which you request my opinion as follows:

"In the past we have rotated the purchase of gasoline from the nine distributors in the county; this being handled by four dealers serving the four districts each month. Purchase orders are issued as the need arises in each of the four districts.

"Since no one purchase amounts to \$500.00 are we permitted to continue this method of purchasing under Act 217, Competitive Bid Law? If not, is there any way, in your opinion, that we may continue to purchase from nine distributors?

"We will certainly appreciate you giving us an immediate reply."

In our telephone conversation of recent date, you have advised me that purchase orders are issued separately for each of the four districts and that no one purchase order exceeds Five Hundred Dollars (\$500.00); however, that purchase orders issued for all four districts combined at any one time would exceed Five Hundred Dollars (\$500.00).

Section 1 of Act No. 217, Special Session 1967, provides, in effect, that any contract for labor, services or work, or purchase or lease of materials, supplies, or other personal property involving Five Hundred Dollars (\$500.00) or more, shall be let on open competitive bidding on sealed bids to the lowest responsible bidder. Section 6 of Act No. 217, *supra*, provides that no purchase or contract shall be divided into parts to avoid competitive bidding. Any such partial contract shall be void.

There is no provision or section under Act No. 217 authorizing or providing for separate purchases by divisions or districts of a county and, in fact, Section 1, *supra*, by its very wording, negates the idea of considering districts of a county separately in determining whether or not the figure of Five Hundred Dollars (\$500.00) has been exceeded. I am, therefore, of the opinion that any purchase made on behalf of the county exceeding Five Hundred Dollars (\$500.00) must be bid under the provisions of Act No. 217, *supra*, and that the county may not be broken into districts, divisions or otherwise to evade the provisions of this Act.

Very truly yours,
MacDONALD GALLION
Attorney General

July 24 1967

Mr. Lesley Vance
Coroner

Russell County
Britton and Dobbs Memorial Chapel
1514 Fifth Avenue
Phenix City, Alabama 36867

Coroners — Bodies — Physicians.

1. Any party has the right, when death occurs by natural causes, to order the removal of a dead body to a mortuary; any party has the same right when death occurs by unlawful means if the coroner has performed his duties pertaining to such deaths.
2. A coroner need not be called to investigate the death of a person who was attended by a physician, and when such death was not the result of unlawful means.

Opinion by Assistant Attorney General Mooneyham.

Dear Sir:

Your request for an official opinion bearing date of June 30, 1967 is as follows:

"As Coroner of Russell County, Alabama, I would appreciate it very much if you will furnish me the following information:

"1. Would I as a Coroner have the authority to remove a deceased body from the Hospital (this being a Coroner's case) when no member of the family can be reached.

"2. When a patient has been admitted to the Hospital and dies within 24 hours does the law state that the Coroner must be called even though the patient is attended by a physician."

When death occurs without medical attendance and is occasioned by an accident or natural causes, then the coroner or other legal official, or any friend, relative, or neighbor of a dead person has the authority to order the removal of the body to a mortuary, when it does not appear that death occurred by any unlawful means. Opinion of Attorney General to Mr. J. E. Newton, Franklin County Coroner, dated May 26, 1967. (Ms.)

Further, I am of the opinion that the above statement would apply to cases involving death by unlawful means, if the coroner has performed his proper functions relating to such deaths. See Title 15, Sections 76-89, Title 22, Section 26, Code of Alabama 1940.

The answer to your second question is derived from a reading of Title 15, Sections 76-78, and Title 22, Section 26, Code of Alabama 1940.

Section 76, *supra*, reads as follows:

"Process of holding coroner's inquest; jury of inquest summoned by coroner.—When a coroner has been informed that a person has been killed, or suddenly died under such circumstances as to afford a reasonable ground for belief that such death has been occasioned by the act of another by unlawful means, he must forthwith make inquiry of the facts and circumstances of such death by taking the sworn statement in writing of the witnesses having personal knowledge thereof, and submit the same to a judge of a court of record or a solicitor; and if, upon such preliminary inquiry the judge or solicitor is satisfied from the evidence that there is reasonable ground for believing that such death has been occasioned by the act of another, by unlawful means, he must direct the coroner to forthwith summon a jury of six discreet householders of the county to appear before him forthwith at a specified place and inquire into the cause of such death, but no person shall be liable to serve as a juror more than one time during any one year, and no person shall be paid compensation for services as a juror on more than one inquest during any one year."

Section 78, *supra*, reads, in part, as follows:

". . . when a coroner has been informed that a person is dead in the county, and that said person died without being attended or examined by a legally qualified physician, the coroner shall forthwith proceed to the place where the dead person is lying, and examine the dead body to ascertain the cause of death, and report same in the same manner as inquests are reported; . . ."

Section 26, *supra*, reads as follows:

"Registration of deaths occurring without medical attendance.—In the case of any death occurring without medical attendance, it shall be the duty of the undertaker, or other person to whose knowledge the death may come, to notify the local registrar of such death, and when so notified the local registrar shall, prior to the issuance of a burial permit, inform the county health officer, who shall immediately investigate and certify as to the cause of death; provided, that if the health officer has reason to believe that the death may have been due to an unlawful act or neglect, he shall then refer the case to the coroner or other proper officer for his investigation and certification. The coroner, or other proper officer whose duty it is to hold an inquest on the body of the deceased person and to make the certificate of death required for a burial permit, shall state in his certification the name of the deceased person and shall prepare the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or if from external causes, the means of death; whether probably accidental, suicidal or homicidal; and shall in any

case, furnish such information as may be required by the state registrar in order to properly classify the death. When there is no county health officer, and when there is no reason to believe the death to be due to an unlawful act or neglect in such cases only the local registrar is authorized to complete the certificate from the statement of relatives or other persons having adequate knowledge of the facts; provided, that when there is reason to believe the death is due to an unlawful act or neglect and there is no county health officer, the local registrar shall notify the coroner or other proper officer for his investigation and certification."

The gist of the above-quoted sections require the calling of a coroner when a person dies without medical attendance and such death is surrounded with circumstances as to afford reasonable ground for belief that such death has been occasioned by the act of another by unlawful means.

It is my opinion, based on a reading of these actions, that if a person dies while being attended by a physician, and death is not the result of any unlawful means or under circumstances that would afford a belief of such, then the coroner need not be called upon to investigate such death.

Very truly yours,

MacDONALD GALLION
Attorney General

July 25, 1967

Honorable John F. Watkins
Executive Director
Alabama League Of Municipalities
24 South Hull Street
Montgomery, Alabama 36104

Bids — Banks and Banking — Contracts — Municipalities.

Contracts by municipalities with fiscal agents who represent investment banks are not required to be awarded on a competitive bid basis.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated July 6, 1967, is as follows:

"In behalf of the cities and towns of Alabama, we respectfully request your opinion on the following question relating to our

new competitive bid law, Act Number 217, Special Session of the Legislature of Alabama 1967:

"Are fiscal agents who represent investment banking firms, under contract with cities and towns, exempt from the provisions of Act Number 217, above? Section 2 of the Act provides that bids shall not be required where the contract is for the securing of services of consultants or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part."

The statute to which your request refers is Act No. 217, Acts of Alabama 1967, approved May 10, 1967. This Act provides that all expenditures of public funds by municipalities in the amount of \$500.00 or more for labor, services, or work must be made by contract entered into on a competitive bid basis.

Section 2 of Act No. 217, supra, reads, in part, as follows:

"Competitive bids shall not be required for . . . contracts for the securing of services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part; . . ."

I am of the opinion that the quoted portion of said Section 2 is sufficiently broad to exempt from the competitive bid requirements of Act No. 217, supra, contracts entered into by municipalities with fiscal agents who represent investment banking firms.

Therefore, your question is answered in the affirmative.

Very truly yours,
MacDONALD GALLION
Attorney General

July 26, 1967

Honorable John F. Watkins
Executive Director
Alabama League Of Municipalities
24 South Hull Street
Montgomery, Alabama 36104

Bids — Contracts — Corporations — Counties — Municipalities.

The statute which requires that local governments and agencies award contracts on a competitive bid basis does not prevent such governments and agencies from dealing with a corporation which has a municipal official as one of its officers or stockholders.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated July 6, 1967, is as follows:

"Under the provisions of Section 3 of Act Number 217, Special Session of the Legislature, 1967 (the new competitive bid law), there is the following provision: 'no member or officer of the governing bodies of the municipalities of the State, and the governing boards of instrumentalities of counties and municipalities, including water works boards, sewer boards, gas boards, and other like utility boards and commissions, shall be financially interested, or have any personal beneficial interest, either directly or indirectly in the purchase of or contract of any personal property or contractual service. . . . '

"Prior to the adoption of Act Number 217, the Attorney General's Office has consistently ruled that a corporation of which an officer of a municipality is a stockholder or director, might legally contract with the municipality and that such contract would not be affected by the connection of the officer. Also, these rulings have held that Title 37, Section 414, Code of Alabama, would not be violated by such a contract between the municipality and such a corporation.

"In behalf of our municipalities, we respectfully request your opinion on the following questions:

"1. Does Section 3 of Act Number 217, above, prohibit a corporation in which an officer of a municipality is a stockholder or director, from bidding on contracts with the municipality?

"2. If your answer to the first question is in the negative, would the municipal officer be guilty of any violation of the Act if the corporation is the low bidder and awarded the contract?

"3. In the event your answer to the foregoing questions are in the affirmative, we further would like your opinion whether or not a municipal officer would be prevented by this Act from bidding upon contracts with other public agencies covered by the Act, but which such municipal officer does not serve as an officer?"

The statute to which your request refers is Act No. 217, Acts of Alabama 1967, approved May 10, 1967. This Act provides that all expenditures of public funds made by municipalities, counties and the instrumentalities thereof in the amount of \$500.00 or more for labor, services, or work, or for the purchase or lease of personal property must be made by contract entered into on a competitive bid basis.

As your request points out, Section 3 of Act No. 217, *supra*, prohibits any municipal or county officer or officer of any board or agency to

which this statute applies from having any direct or indirect financial interest in any contract controlled by said Act.

This office has held, in construing statutes similar to Section 3, supra, that such statutes do not prevent a municipality or county from dealing with incorporated firms which have as their officers or stockholders officials of the local government. Quarterly Reports of Attorney General, Volume 117, page 52, Volume 111, page 44 and Volume 56, page 108.

Therefore, each of your questions is answered in the negative.

Very truly yours,
MacDONALD GALLION
Attorney General

August 7, 1967

Honorable Joe T. Smitherman
Mayor, City of Selma
Selma, Alabama

Counties — Dallas County — Leases — Municipalities — Real Estate — Sales.

A county and municipality jointly may lease or sell jointly owned real property not needed for public purposes.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated July 10, 1967, is as follows:

"By deeds dated March 10, 1967, the City of Selma, jointly with Dallas County, Alabama, acquired acreage adjoining Sel-Field which is the municipal airport of the City of Selma and which is owned and operated by the City of Selma. A number of these acres acquired will not be necessary to be used in connection with Sel-Field and the City proposes to subdivide the acreage not necessary to be used in connection with Sel-Field into lots for an industrial park. These lots would be sold by the City to businesses or industries that are interested in locating near the municipal airport.

"QUESTIONS:

"1. May the City of Selma subdivide lands which it has acquired jointly with Dallas County adjoining the municipal airport, which lands are not necessary to the operation of the airport, into lots and the lots sold to private businesses or industries?

"2. May the City of Selma, jointly with Dallas County, lease

the portion of the lands that are not needed for the operation of its municipal airport?"

The control of all county property is vested in the county governing body by Title 12, Section 177, Code of Alabama 1940. This statute authorizes a county to lease or sell its surplus property. **Jackson v. Ball et al.**, 211 Ala. 273, 100 So. 327. See also **Board of Revenue of Etowah County v. Hutchins**, 250 Ala. 173, 33 So. 2d 737.

The management and control of the property of the City of Selma is vested in its governing body by Title 37, Section 429, Code of Alabama 1940, as amended by Act No. 666, Acts of Alabama 1961, page 910.

Act No. 843, Acts of Alabama 1953, page 1135, as amended by Act No. 412, Acts of Alabama 1957, page 574, authorizes a municipality to lease or sell any of its real property not needed for public or municipal purposes.

I know of no statute or rule of law which prevents the City of Selma and Dallas County from subdividing the property to which your request refers in order to seek the most advantageous lease or sale thereof.

Therefore, the City of Selma and Dallas County may act jointly in selling or leasing the property here considered.

Very truly yours,

MasDONALD GALLION
Attorney General

August 9, 1967

Honorable Guy Hunt
Judge of Probate
Cullman County
Cullman, Alabama

License Taxes — Distributions — Municipalities.

1. Where the records indicate that the owner of a motor vehicle resides in a municipality in the County, and the Judge of Probate under Title 51, Section 713, Code of Alabama 1940, Recompiled 1958, distributes the municipality's part of the proceeds from the license tax through error and mistake to the County, in such cases, the notations on the records would govern, and if no final audit for the year involved has been made by the Examiners of Public Accounts, or final settlement made, then the matter may still be adjusted between the County and the municipality.
2. Where the owner of the vehicle involved fails to state that he resides in a municipality, and no such notation

is made, the assessment tax receipt and tag application form, upon proper proof being presented to the Probate Judge and the County Officials involved that the owner did reside at the time in a municipality in the County, the records can still be amended and corrected to show the owner to have so resided, if the Examiners of Public Accounts have not audited the records, and if a final settlement has not been made, and from such amended and corrected record, the County, where the money under Section 713, as amended, *supra*, has been by error and mistake distributed to it may still adjust the matter by paying the amount of the distribution over to the municipality.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office bearing date of May 26, 1967, is as follows:

"Your attention is called to Title 51 Sec. 713 as regards the distribution of Motor Vehicle license taxes.

"We have in our county, 6 municipalities which receive funds under this act. One of the six, Good Hope, does not have a post office. This makes it in a practical sense impossible to determine from the address, whether any person resides in said municipality. Due to this, Good Hope has received only a very small amount to which the town is entitled from its beginning.

"In 1966, due to our error, we failed to note the notation of the tax assessor, (GH), on the assessment of approximately 20 vehicles. We therefore failed to remit to Good Hope this money. However, the City Council of the town of Good Hope has filed with me a list of some 160 tag numbers which they claim to be residing in their municipality on December 1, 1966. They request the remittance of their proper funds for the total license. Upon our check of the assessment sheets there were at least 120 that show no indication that they live in said municipality, although I feel confident from the certification of the City Council that they do. It should also be pointed out that Good Hope does not have an *ad valorem* tax for which the assessor must assess the residents.

"Your official opinion is hereby requested.

"1. What is the correct way for Good Hope to collect for those 20 license plates for which this office was clearly in error?

"2. Can Good Hope collect for those 120 license plates for which we have no way to determine according to the assessment sheet that the funds should have gone to Good Hope and not Cullman County?

"3. If they can collect, what is the proper way?

"4. To attempt to prevent a reoccurrence of the same problem in the future, whose responsibility each year is it to determine if a person lives in a municipality: In regard to this, if you have any example of how other counties have solved this problem, I would appreciate your comment and legal opinion."

In the first place, I wish to state that the distribution of license taxes on motor vehicles are provided for, or were during the time pertinent to inquiry in this case, in Title 51, Section 713, as amended, Code of Alabama 1940, Recompiled 1958, (See 1965 Pocket part). This Section, as amended, provides in essence, that after the expenses to be paid to the State Department of Revenue for administering and enforcing the motor vehicle license laws are deducted, that the remainder of such receipts be divided and distributed by the Judge of Probate, as follows:

"* * *thirty-seven per cent shall to the state and sixty-three per cent to the county in which the owner of the motor vehicle resides."

In the event that the owner of the vehicle does not reside in an incorporated city or town, then the distribution is to be made, as follows:

"* * *thirty-seven per cent shall go to the state and sixty-three per cent to the county in which the owner of the motor vehicle resides."

This office has ruled in the opinions to Honorable George W. Jones, Mayor, Town of Ragland, Alabama, dated May 1, 1967 (M.S.) and to Honorable Joe W. Atkins, Town of Ashville, Alabama, dated February 9, 1966, that the distributions under Section 713, as amended, *supra*, should be made and distributed by the records and that what appears in the records is binding as to how the distribution is to be made. These opinions would now, however, prevent you and the other county officials involved from correcting the records to conform with the true facts of the case, where an obvious error has been made and where the records have not for the fiscal year involved been finally audited by the Examiners of Public Accounts and where no final settlement has been made.

1. Your first question is answered to the effect that while there appears to be no prescribed procedure in the Alabama Code outlining any specific remedy whereby the town of Good Hope could recoup its part of the distribution made by error to the County as to the licenses paid by the twenty individuals to whom you refer, this might be accomplished through the assistance of the State Examiners of Public Accounts. See Title 55, Section 170(8), Code of Alabama 1940, Recompiled 1958. The notations contained on the record govern in this respect. Opinion of this office to Honorable George W. Jones, Mayor, Town of Ragland, Alabama, dated May 1, 1967, (Ms.).

It is my information that the Examiners of Public Accounts have not made an audit of your records or the records of the Tax Assessor

or Tax Collector of Cullman County for the fiscal year involved, and no final settlement has in this respect been made. Therefore, this error might still be remedied by following the records, and adjusted by the county, and the monies involved still paid over by the County to the town of Good Hope, if the county governing body will authorize this to be done.

2. Your second question is answered to the effect that if it is a fact the said 120 motor vehicle owners did reside at the time in the town of Good Hope, and this fact can be established by proper proof to your satisfaction and that of the other county officials involved, and no audit has yet been made of the records by the Examiners of Public Accounts, the records can still be corrected by the appropriate county officials to show said owners to have resided at the time in the town of Good Hope. This correction and change should be made in the records of all of the county officials involved including those in your office. If the records are so changed and corrected, then these matters may also be adjusted between the County and the town of Good Hope in the same way as has been outlined in my answer to your first question.

3. Your third question has already been answered under my response to your first and second questions.

4. Your fourth question is answered to the effect that it is the Tax Assessor's responsibility in the first instance to see that the Motor Vehicle Assessment Tax Receipt and Tag Application form (which constitutes the record) is properly and correctly filled out, and that the name and address of the owner of the vehicle is given therein, and the owner states whether or not he resides in an incorporated town or city. This is so as the assessment of the vehicle is the first step and the Tax Assessor is the first county official whom the taxpayer contacts. If the owner does reside in an incorporated town or city, then the Tax Assessor is required to see that the name of the town or city is inserted in the proper space which is provided therefor in the form.

Very truly yours,

MacDONALD GALLION
Attorney General

August 16, 1967

Honorable Thomas M. Galloway
Attorney at Law
958 Dauphin Street
Mobile, Alabama 36604

Bids — Contracts — Funds — Housing Authority — Municipalities.

1. The statute which requires that local governments and agencies award contracts on a competitive bid basis ap-

plies to the expenditure of all funds, from whatever sources derived, by municipal housing authorities.

2. No purchase or contract entered into by a municipal housing authority may be divided into parts by issuing separate purchase orders in order to avoid competitive bidding.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated July 18, 1967, is as follows:

"I enclose herewith a copy of a letter as received by the undersigned from the Mobile Housing Board dated July 11, 1967, relative to securing an opinion from you with respect to the Mobile Housing Board complying with the provisions of Act No. 217, General Acts of Alabama (Special Session, 1967).

"The Mobile Housing Board is a body corporate and politic organized and existing under the provisions of Title 25, Chapter 2, Code of Alabama, 1940, recompiled 1958. As such it appears to be an instrumentality of the City of Mobile. In re Opinion of Justices, No. 45, 235 Ala. 485, 179 So. 535.

"If the Mobile Housing Board is an instrumentality of the City of Mobile then the provisions of Act No. 217 Supra apply to the expenditure of funds in an amount of \$500.00 or more as set out in said Act.

"The Mobile Housing Board under the authority given it by the provisions of Title 25, Code of Alabama 1940, recompiled 1958, conducts two operations. One is Public Housing which receives no state, county or city funds but operates either from its own income or federal funds. The other is Urban Renewal or Re-development which operates with federal funds and City of Mobile funds.

"In the operation of Public Housing particularly, and sometimes Urban Renewal, purchases are made from what is known as a 'Consolidated Supply Contract'. This is a catalog of supplies which are available from the enumerated supplier and this catalog is compiled by the Southeastern Regional Office of the Housing Assistance Agency of the Federal Government by taking bids from the various suppliers who agree to supply all Housing Boards in this area for the price as stipulated. These cover a number of items and the bid price for the whole area is generally less than any one Housing Board could receive by bid. When the Mobile Housing Board wishes to buy an item as listed that it merely writes the supplier who furnishes the item for the amount as set out in the Consolidated Supply Contract.

"The Mobile Housing Board must comply with the applicable federal statutes and regulations as well as those of the state of Alabama. To do this necessitates your opinion on the following matters to protect them.

"1. Do the provisions of Act No. 217, Supra, apply to the Mobile Housing Board?

"2. If your answer to 1 is in the affirmative do the provisions of Act No. 217, Supra, apply to the expenditure of funds other than city, county or state by the Mobile Housing Board?

"3. If your answer to 1 is in the affirmative may the Mobile Housing Board make purchases from the Consolidated Supply Contract of the Housing Assistance Administration without receiving sealed bids from the suppliers listed therein.

"4. If your answer to 1 is in the affirmative may the Mobile Housing Board make purchases from the Consolidated Supply Contract without complying with the provisions of Act No. 217.

"5. Do the provisions of Act No. 217, Supra require that all purchases to be made at one time be in a consolidated contract? For example may a separate contract be made for each of ten refrigerators rather than all ten being placed upon one contract."

The Competitive Bid Law to which your request refers is Act No. 217, Acts of Alabama 1967, Approved May 10, 1967.

In answer to your first question, I am of the opinion that Act No. 217, supra, applies to the Mobile Housing Board since said Act specifically provides that it applies to instrumentalities of municipalities. See Opinion to Honorable Leonard Beard, Director, State Planning and Industrial Development Board, under date of June 14, 1967.

Section 1 of Act No. 217, supra, provides, in part, as follows:

"All expenditure of funds of whatever nature for labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving five hundred dollars (\$500.00) or more, made by or on behalf of any . . . governing bodies of the municipalities of the state, and the governing boards of instrumentalities of counties and municipalities, . . . shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder; . . ." (Emphasis supplied.)

Said Act contains no provision exempting from its operation funds received by the Mobile Housing Board from other than State, County or Municipal sources.

Therefore, your second question is answered in the affirmative, and your third and fourth questions are answered in the negative.

This office held in an opinion to Honorable N. E. Dixon, President, Board of Revenue, Marengo County, under date of July 20, 1967, that Section 6 of Act No. 217, supra, requires that no purchase or contract may be divided into parts to avoid competitive bidding by issuing separate purchase orders or entering into separate contracts.

Therefore, in answer to your fifth question, you are advised that all purchases of one item of personal property to be made by the Mobile Housing Board at one time must be made under one contract and may not be made by separate purchase orders in order to avoid the requirements of Act No. 217, supra.

Very truly yours,

MacDONALD GALLION
Attorney General

August 18, 1967

Honorable Robert M. Field
City Attorney
City of Anniston
Anniston, Alabama 36201

Assessments — Municipalities — Property — Taxation —
Taxes.

A municipality may assess the cost of constructing a covered sidewalk against abutting property.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated August 1, 1967, is as follows:

"The City of Anniston along with the Anniston Chamber of Commerce is interested in erecting and maintaining a permanent covered walkway over the sidewalks of our main business street in about a four block area.

"A large majority of the merchants concerned are in favor of such a program and are willing to have the cost of same attached to them in accordance with the terms of Title 37, Section 513. However, some of the merchants are not in favor of such a program.

"Question: Can the City of Anniston cause the cost and expense of all or any part of said improvement to be assessed against the property owners abutting on said sidewalk?"

The statutes authorizing municipalities to construct public improvements within their corporate limits and assess the cost thereof against

benefited property are codified as Title 37, Chapter 11, Article 1, Code of Alabama 1940.

Title 37, Section 513, Code of Alabama 1940, provides, in part, as follows:

"All cities or towns in this state may design, or cause to be designed, contract for, and execute, or cause to be executed, the construction of the following named improvements or re-improvements to the streets, or any portions thereof, . . . 1. The opening, widening, extending of streets, avenues, alleys, highways, and other public places, construction or reconstruction of improvements to streets, avenues, alleys, highways, or other public places by filling, grading, leveling, graveling, slagging, cherting, macadamizing, paving, sidewalking, curbing, guttering, draining, or otherwise improving any street, avenue, alley, highway, or other public place; provided that the cost and expense, or any part thereof, may be assessed against the property abutting on the portion of such street so opened, widened, extended, or improved to the extent of the increased value thereof by reason of the special benefits derived therefrom. . . ."

I am of the opinion that the above-quoted portion of said Section 513 is sufficiently broad to authorize a municipality to construct a public improvement such as the one to which your request refers, and assess the cost, or any part thereof, against the property benefited thereby. Cf. Quarterly Report of Attorney General, Volume 95, page 47, wherein the definition of the word "street" was discussed.

Therefore, your question is answered in the affirmative, provided that the assessments are made in accordance with and subject to the requirements of Article 1, *supra*.

Very truly yours,
MacDONALD GALLION
Attorney General

August 21, 1967

Honorable Ralph P. Eagerton
Chief Examiner of Public Accounts
State of Alabama
Montgomery, Alabama

Bids — Colleges and Universities — Contracts — Counties —
County Boards of Education — Municipalities — Schools —
Words and Phrases.

1. Any purchase or lease in excess of \$500.00 made by awarding authority listed under provisions of Act No. 217, Special Session 1967, must be let by open and competitive bidding.

2. Emergency purchases affecting public health, safety or convenience so declared in writing may be let to the extent necessary to meet the emergency without public advertisement. Section 7, Act No. 217, *supra*.
3. The term "purchase or lease of materials, equipment, supplies or other personal property" is hereby defined to mean purchases of like items easily classified by category.
4. State contracts made for the benefit of counties may be utilized by such counties without further bid under Act No. 217, *supra*, provided such contracts were let by the State under competitive bid provisions of Title 55, Section 494, et. seq., Code of Alabama 1940, Recompiled 1958 (1965 Cumulative Pocket Parts), with specific reference to counties. The same rule would also apply to those contracts let by the state under similar provisions for the benefit of schools, school boards and municipalities and municipal boards. See also Title 55, Section 108, Code of Alabama 1940, Recompiled 1958.
5. The awarding authority may reject any bid and negotiate in the event that only one bid is submitted and may further reject any bid if the price is deemed excessive or quality of the product inferior. In the event all bids are equal and all products equal in quality, the awarding authority may reject all bids and negotiate for price or reject and solicit new bids or contract with any low bidder of its choice.
6. Valid contracts executed prior to July 1, 1967 do remain in full force and effect provided the same do not bind the county nor obligate the county beyond the end of the fiscal year.
7. Each individual purchase stands on its own merits though no contract may be broken into parts to evade the purpose of Act No. 217, *supra*.
8. No purchase or contract shall be divided into parts to avoid competitive bidding by issuing separate purchase orders or contracts for each district, division or office of a county.

Opinion by Assistant Attorney General Webb.

Dear Mr. Eagerton:

I have your letter of August 11, 1967 in which you request an opinion of this office as follows:

"I am enclosing a letter from Honorable Walter D. Ritch, Chairman of the Marion County Board of Revenue, in which he propounded several questions regarding the provisions of

Act No. 217, Special Session 1967, requiring competitive bids for county purchases.

"The matters raised in these questions are very important not only for counties but for municipalities, schools and colleges and universities required to operate under the provisions of Act No. 217, supra. I request your opinion on these questions and, particularly with regard to Question No. 4, please advise me as to whether or not county boards of education and schools under control of the State Board of Education may purchase under contract let by the State Purchasing Agent in compliance with the state competitive bid law. Title 55, Section 494, et seq., Code of Alabama Recompiled 1958 (1965 Cumulative Pocket Parts)."

The letter referred to by you from Honorable Walter D. Ritch, Chairman of the Marion County Board of Revenue, reads as follows:

"The following questions are to clarify the Bid Law in order that Marion County may comply in the purchase of supplies, materials, repair parts, etc.:

"1. When a piece of equipment breaks down and needs to be repaired immediately in order to continue construction and maintenance of any county facility, it is our interpretation that this is covered by Section 7 and such repair parts can be purchased without regard to the Bid Law. Is this correct?

"2. When a piece of equipment, through usage, needs overhauling such as the overhauling of the motor requiring new pistons, rings, and inserts, or the replacement of the track, does this come under the Bid Law if the equipment is needed immediately for the construction and maintenance of a county facility? Our interpretation is that the purchase of parts does not come under the Bid Law. If this equipment is not needed immediately as stated above, the purchase of parts will come under the Bid Law. Is this correct?

"3. We have in our county several auto parts dealers from whom we purchase at wholesale prices many articles such as nuts, bolts, spark plugs, pistons, rings, etc., and the account from some of these places will run from \$300 to \$500 per month. The aggregate amount of any one item will not exceed \$500 per year. It is our interpretation of the Bid Law that unless the aggregate sum of any one item amounts to \$500 within a year, the purchase of all the items does not come under the Bid Law, only the one item which amounts to \$500. Is this correct?

"4. Where the state has under contract such items as asphalt, crushed stone, tires, tubes, engineering supplies, etc., can the county, through the state purchasing agent, purchase these items under the state contract and comply with the Bid Law? It is our understanding this will comply with the Bid Law.

"5. In the event that the county advertises for bids on any item and the suppliers all bid the same price, can the county reject all bids and negotiate the contract provided the contract is less than the bid prices. Our interpretation on this question is yes and the only action the county should take.

"6. The county now has under contract several concerns for the purchase of certain materials which we understand are valid contracts none of which exceeds one year. It is our interpretation that these are valid contracts and will remain in full force not affected by the Bid Law.

"7. One of the items in question 6 is concrete pipe. We have a local concern which manufactures concrete pipe and will sell this pipe to the county at a price less than we are now paying under the existing contract. Can the County purchase this pipe from the local concern at a price less than we are now paying under our existing contract which we stated above?

"8. When the purchase of any one item of materials, parts, or engineering supplies whose aggregate purchase for the year will amount to \$500 or more, will this item come under the Bid Law? Our interpretation is yes except as provided by Section 7 which provides for the purchase of any item when an emergency exists.

"9. There are five districts in Marion County with separate money for each division. Can any one district award a separate contract for his district?

"10. For the repair parts for any piece of equipment, can the county require genuine parts? For example, can we require genuine Caterpillar parts for Caterpillar equipment? There are only two Caterpillar dealers in Alabama and the prices are the same for each dealer. If we can require Caterpillar parts, will it be necessary to take bids from the two dealers if an emergency does not exist as covered by Section 7?"

The first and second questions pertain to an interpretation of the emergency provision of Section 7, Act No. 217, Special Session 1967, which reads as follows:

"In case of emergency affecting public health, safety, or convenience, so declared in writing by the awarding authority, setting forth the nature of the danger to public health, safety, or convenience involved in delay, contracts may be let to the extent necessary to meet the emergency without public advertisement."

As to what might constitute an emergency affecting public health, safety, or convenience, this, in my opinion, addresses itself to the sound discretion of the awarding authority subject, of course, to review by the courts involving matters of gross breach of this discretion. In this regard, you might note the annotations contained in 53 A.L.R. 2d 514,

et seq., and 43 Am. Jur., Public Works and Contracts, Section 31, page 772. What constitutes an emergency within the meaning of Act No. 217, supra, depends upon the special circumstances in each case. Generally, however, the term "emergency" signifies a situation which has suddenly and unexpectedly arisen and which requires speedy action, some unexpected necessity requiring immediate or, at least, quick action. Some examples held to be emergencies are—overflow of polluted waters into the public water sources, war, etc. Roads, bridges and streets are generally not considered to be constituted emergencies unless they are in such a dangerous condition as to actually constitute an immediate threat to life or property. I am, therefore, unable to categorically answer your first two questions.

Any purchase or lease in excess of \$500.00 must be let by open competitive bidding under the provisions of Act No. 217, supra, unless specifically exempt by the provisions of this act. The term "purchase or lease of materials, equipment, supplies or other personal property," in my opinion, means purchases of like items easily classified by category.

I, therefore, answer your third question in the negative for two reasons. First, each purchase stands on its own merits although, of course, it may be considered with other purchases let within a close proximity of time to determine whether or not a major contract was broken into parts in order to evade the purposes of Act No. 217 supra. There is no requirement, however, within the provisions of this act under which the aggregate total of purchases made during a year may not exceed \$500.00. Second, to the use of the word "items" within the request for opinion, it is my interpretation that the intent of the Legislature was to include within materials, equipment, supplies or other personal property all like items purchased at any one time; thus, janitorial supplies, for example, should be considered as a like category and the purchases of such supplies at any one time should be lumped together and if the same then exceeds \$500.00, it should be let on competitive bid. Thus, I do not believe that a contract could legitimately be let for \$400.00 worth of nuts, \$400.00 worth of bolts, \$400.00 worth of spark plugs, \$400.00 worth of pistons, and \$400.00 worth of rings at any one time, in view of the fact that the aggregate total of these like items the same constituting automotive supplies as a category, would exceed \$500.00 and, therefore, be subject to competitive bid.

The fourth question involves a proper interpretation of requirements for competitive bidding in the event that the State of Alabama has a contract in existence which directly benefits the particular awarding authority desiring the purchase.

Section 2 of Act No. 217, supra, provides that each awarding authority, under the provisions of this act, shall establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purposes of the act by complying with the requirements for competitive bidding in the operation and management of each of the instrumentalities covered thereby. Section 12 provides that the act shall be cumulative in its nature; however, all conflicting provisions of law are hereby expressly repealed. Title 55, Section 108, Code

of Alabama 1940, Recompiled 1958, requires the State Department of Finance, Division of Purchases and Stores, when requested by any county, municipal corporation, political subdivision and other local public body (including any board of education) to make such purchases, contracts or leases for it. Many local acts are to like import. Any purchase made by the Division of Purchases and Stores or contracts let by it in excess of \$500.00 must be made under the provisions of the State competitive bid law as contained in Title 55, Section 494, et seq., Code of Alabama 1940, Recompiled 1958 (as amended, 1965 Cumulative Pocket Parts). The requirements of the competitive bid law of the state are similar in nature to the requirements of Act No. 217 and, if properly carried out, any purchase made under the provisions of the state bid law would meet each and every requirement of the provisions of Act No. 217, supra. I am, therefore, of the opinion that, if the State Purchasing Agent has let a contract under the provisions of the state competitive bid law for the benefit of any agency covered under Act No. 217, supra, such agency may take the benefits of this contract without further bidding requirements.

Section 1 of Act No. 217 provides that, in the event that only one bidder responds to the invitation to bid, the awarding authority may reject the bid and negotiate the purchase of contract provided that the negotiated price is lower than the bid price. Section 9 provides that the awarding authority shall have the right to reject any bid if the price is deemed excessive or quality of product inferior. Each record with the successful bid indicated thereon and with the reasons for the award if not awarded to the lowest bidder shall, after award of the contract, be open to public inspection. These are the only provisions of Act No. 217 actually providing for a rejection of bids. However, under the exemptions in Section 2 of Act No. 217, supra, it is provided that purchases which by their very nature are impossible of award by competitive bidding and purchases where the price of such products are already regulated and established by State law are not subject to the provisions of competitive bidding. In my opinion, instances of the same price being made by all bidders would lead to one of three conclusions: first, there has been collusion which, of course, would be difficult to establish but should be reported to the District Attorney; second, there is a fixed State price regulated by law as, for example, milk, the price of which is fixed by the Milk Control Board or, third, the article to be purchased is incapable of competitive bid and thus, subject to negotiation. I am, therefore, of the opinion that, in answer to your fifth question, the awarding authority, in event all bids are equal and all products equal in quality, may reject all bids and negotiate for price or reject and solicit new bids or contract with any low bidder of its choice. This is a matter, thus, that would address itself to the sound discretion of the board.

I answer your sixth question in the affirmative. All valid contracts not exceeding one year, executed prior to July 1, 1967, may remain in effect to the end of the contractual period. Section 95, Constitution of Alabama 1901; Article 1, Section 10, Constitution of the United States.

There is, however, one factor which must be considered in any contract and that is that no county may obligate itself beyond the end of any one fiscal year under the Budget and Financial Control Act. Title 12, Section 73, et seq., Code of Alabama 1940, Recompiled 1958; Section 224 of the Constitution of Alabama 1901; and Quarterly Report of Attorney General, Volume 24, page 36.

I cannot answer the seventh inquiry without more details as to the actual contract presently in effect. However, the discussion above on the sixth inquiry should provide sufficient information for a local determination of this issue.

With regard to the eighth question propounded, your attention is invited to discussion contained above on the third question; that is, that, generally speaking, each purchase stands on its own merits. However, it may be considered with other purchases let within a close proximity of time to determine whether or not a contract has been broken into parts to evade the purposes of Act No. 217, supra. Again, notice, however, that Act No. 217, supra, does not use the word "item" but, rather, the phrase "purchase or lease of materials, equipment, supplies or other personal property."

My answer to your ninth inquiry is in the negative, assuming that such contract, when combined with similar contracts for the other four districts, is in excess of \$500.00. In this regard, attention is invited to my opinion to Honorable N. E. Dixon, President, Board of Revenue, Marengo County, Linden, Alabama, in which it was held that no purchase or contract shall be divided into parts to avoid competitive bidding by issuing separate purchase orders or contracts for each individual district of a county. Any purchase made on behalf of an awarding authority covered under the provisions of Act No. 217, supra, exceeding \$500.00, must be bid under the provisions of Act No. 217, supra, and the awarding authority may not be broken into districts, divisions, offices, or otherwise to evade the provisions of this act.

Assuming that Caterpillar equipment requires Caterpillar parts, I answer the first two parts of Question No. 10 in the affirmative. Specifications should be so written as to sufficiently identify the type of equipment or parts desired by the awarding authority. The words "or equal" should be added following specifications if other products are acceptable for the particular job in question. From the latter statement in the tenth question, I assume that the parts in question may be incapable of bid in which case, of course, the purchase would not be subject to the provisions of Act No. 217. See Section 2, supra. However, I feel that you should note that other matters may be taken into consideration by the awarding authority making such determination such as the qualities of the commodities proposed to be supplied in conformity with specifications, purposes for which required, the times of delivery, transportation charges and dates of delivery.

Very truly yours,

MacDONALD GALLION
Attorney General

August 23, 1967

Honorable Bill Bradley
City Attorney
City of Gadsden
Gadsden, Alabama

Appropriations — Corporations — Municipalities.

1. Under the facts presented, the City of Gadsden may make appointments to the Etowah-DeKalb-Cherokee Mental Health Board.
2. Appropriations by the City of Gadsden to a Mental Health Board created under the Alabama Non-Profit Corporation Act discussed.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated July 10, 1967, is as follows:

"A group of interested citizens residing in Etowah, DeKalb and Cherokee Counties in the State of Alabama have filed a Certificate of Incorporation pursuant to Chapter 10 of Title 10, Code of Alabama, 1940, as recompiled 1958, to form a non-profit body corporate named 'The Etowah-DeKalb-Cherokee Mental Health Board, Incorporated.' A copy of this certificate of this incorporation marked Exhibit 'A', Pages 1 through 5, both inclusive, is attached hereto and made a part hereof.

"The purposes of said corporation, as set out in Paragraph II of said Certificate of Incorporation are as follows:

"'(a) To promote the health and general welfare of the people of Etowah, DeKalb and Cherokee Counties, Alabama, by providing a comprehensive program of community based mental health facilities.'

"'(b) To review and evaluate the mental health needs, services and facilities of Etowah, DeKalb and Cherokee Counties, Alabama.'

"'(c) To provide mental health services and facilities for all the people of Etowah, DeKalb and Cherokee Counties who may wish to avail themselves of such services.'

"'(d) To operate as a non-profit, non-proprietary corporation, although a system of fees may be established for those able to pay some or all of the cost of medical services provided.'

"'(e) To provide medical services in respect to the mental health needs of Etowah, DeKalb and Cherokee counties which may include any or all of the following functions:

- (1) Outpatient services.
- (2) Inpatient services.
- (3) Partial hospitalization services, including day care.
- (4) Emergency Services twenty-four hours per day.
- (5) Consultation and education services available to community agencies and professional personnel.
- (6) Diagnostic services.
- (7) Rehabilitative services, which may include vocational, educational, and social programs.
- (8) Precare and aftercare services, such as half-way houses and foster homes and services to groups considered high risks for mental disorder.
- (9) Training of mental health staff in all disciplines as well as mental health orientation for related professions and volunteers.
- (10) Research to evaluate the effectiveness of the program and to add to the knowledge available related to mental health.
- (11) Participation in planning and community organization related to mental health.'

"(f) To provide service to persons of all ages.'

"(g) To provide continuity of care for patients.'

"(h) To provide for the sharing of clinical information concerning patients with cooperating agencies.'

"(i) To provide a qualified psychiatrist with the responsibility for the clinical program.'

"(j) To provide that the medical responsibility for every patient will be vested in a physician.'

"(k) To provide that non-psychiatric physicians will be allowed to follow and assist in the care of their patients.'

"(l) To provide all services of the program to any resident of either Etowah, DeKalb or Cherokee County, Alabama, without regard to the length of such residence.'

"The powers of the corporation are as set out in Paragraph IV of said Certificate of Incorporation and include the following:

"(a) To have all powers necessary or convenient to effect any and all of the purposes for which the corporation is organized it being provided that the specific enumeration of purposes and powers herein shall not be held to limit or restrict in any manner the powers of the corporation otherwise granted by law.

“ (b) To sue and be sued in its corporate name.

“ (c) To purchase, acquire, hold, improve, sell, convey, assign, exchange, release, mortgage, encumber, lease, hire and deal in real and personal property of every kind and character.

“ (d) To make contracts and incur liabilities, borrow money at such rate of interest as the corporation may determine, issue its notes, bonds, and other obligations and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

“ (e) To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security.

“ (f) To make and alter its by-laws.

“ (g) To conduct its affairs, carry on its operations, and have offices and exercise all of the powers granted by Chapter 10 of Title 10, Code of Alabama, 1940, as amended and recompiled.

“ (h) To own, operate, manage or lease mental hospitals or clinics, and to borrow money, mortgage its property, receive grants and aid, contributions and assistance from private and public sources.’

“The initial Board of Directors is named in Paragraph VII of said Certificate of Incorporation, and in Paragraph VIII of said Certificate of Incorporation it is provided that the initial members of the Board of Directors will serve until their successors are appointed by the various county and municipal governing bodies in Etowah, DeKalb and Cherokee County, Alabama. It is therein further provided that the appointment of future directors will be governed by the procedure set out in the By-Laws of the corporation.

“The By-Laws of the corporation provide that the affairs of the corporation shall be managed by its Board of Directors. The procedure for appointment of future directors as set out in the By-Laws provide that the governing bodies of Etowah, Cherokee and DeKalb counties shall name three directors each.

The governing body of the City of Gadsden is given authority to name three directors. The governing bodies of the City of Centre and the City of Fort Payne are given the right to name one director each. And, finally, the members of the Board of Directors of Baptist Hospital of Gadsden, Inc., which is a private corporation, are given the right to name three of the directors.

As stated before, the Board of Directors is vested with the power of managing the affairs of the corporation, including the election of officers of the corporation and transaction of other business. The By-Laws also provide for an executive committee composed of officers of the corporation plus the three directors

named by Baptist Hospital of Gadsden, Inc., the private corporation heretofore referred to.

"Therefore, the Baptist Hospital of Gadsden, Inc., a private corporation, is given a distinct voice in the operation and management of the corporation.

"We are aware of the prohibitions contained in the Constitution of Alabama against a city loaning or granting funds to a private individual, association or corporation. It is even beyond the power of the Legislature, as we understand it, to authorize a city to make such a grant or loan.

"The corporation is requesting the City of Gadsden to grant or donate to it a sum of money as a capital expenditure to be used by the corporation to construct a building for its use on property leased by the corporation from Baptist Hospital of Gadsden, Inc.

"We wish your opinion in answer to the following questions:

"1. Is the City of Gadsden authorized to adopt a resolution approving such corporation and making appointments to the Board of Directors of said corporation, as hereinabove described, from time to time?

"2. Is the City of Gadsden authorized to make a lawful and legal expenditure of municipal funds as a capital grant for the construction of a building for the corporation on the land leased to it by Baptist Hospital of Gadsden, Inc.?

"3. Is the City of Gadsden authorized to, from time to time in the future, make a lawful expenditure of municipal funds to said corporation to provide it with operating funds, giving consideration to the incorporation and organization of the corporation as hereinabove described?

"This is a matter of critical importance to the people of this area and your early response will be greatly appreciated."

The Alabama Non-Profit Corporation Act under which the Etowah-DeKalb-Cherokee Mental Hospital Board was incorporated is Act No. 578, Acts of Alabama 1955, page 1254.

The opinion reported in Quarterly Report of Attorney General, Volume 126, page 24, holds that participating counties and municipalities may make appointments to the Board of Directors in accordance with the by-laws of the North Central Alabama Mental Health Board, a corporation organized under Act No. 578, *supra*.

It is my opinion that the fact that the Baptist Hospital of Gadsden is given the right to appoint Directors to the Mental Health Board, here considered, does not prevent the City of Gadsden from approving the corporation and making appointments to its Board of Directors as provided by its by-laws.

Therefore, your first question is answered in the affirmative.

We held in an opinion to Honorable Ira H. Weissinger, Judge of Probate, Lee County, under date of March 3, 1960, (not reported) that Title 22, Section 190, Code of Alabama 1940, authorizes counties and municipalities to make appropriations to a Mental Health Clinic incorporated under Act No. 578, *supra*.

However, as was pointed out in the opinion reported in Quarterly Report of Attorney General, Volume 126, page 24, *supra*, where a mental health facility serves more than one county and municipality, each governmental unit must be assured that its funds will be used for the benefit of its citizens with priority to its indigent patients.

Therefore, I am of the opinion that the City of Gadsden may appropriate funds as a capital grant for the construction of the building to which your second question refers, provided that the total amount of such appropriation does not exceed the pro rata share of the City considering the anticipated benefits to the residents of said City as compared with such benefits to the other participating governmental units.

I am also of the opinion, in answer to your third question, that the City of Gadsden may appropriate funds for the operating expenses of the corporation to which your request refers provided that said corporation agrees to expend each appropriation for the benefit of the residents of the City with priority to its indigent patients.

Very truly yours,
MacDONALD GALLION
Attorney General

August 28, 1967

Honorable Ralph P. Eagerton
Chief Examiner of Public Accounts
State of Alabama
Montgomery, Alabama

Judges of Probate — Licenses — Milk and Milk Control Board — Statutes.

1. Quarterly reduction of milk store license prohibited by Act No. 497, Acts of Alabama 1961, page 579 (Title 22, Sections 214 — 215, Code of Alabama 1940, Recom-piled 1958, 1965 Cumulative Pocket Parts).
2. Section 4, Act No. 893, Acts of Alabama 1953, page 1199 (Title 51, Section 553(4), Code of Alabama 1940, Re-compiled 1958), insofar as the same authorizes sale of milk store licenses on quarterly reduction basis is repealed. Act No. 497, *supra*.

Opinion by Assistant Attorney General Webb.

Dear Mr. Eagerton:

I have your request for an opinion dated August 15, 1967, which reads as follows:

"Title 22, Sections 214 and 215, Code of Alabama 1940, provided for a store license for persons or firms operating a retail store within the boundaries of a regularly established milk shed buying, selling, handling or distributing milk of \$2.50 per annum, under the provisions of Section 215, *supra*. Under Section 214, *supra*, provision was made for quarterly reductions in a license fee of twenty-five percent for each fully elapsed quarter of the license year on persons or firms just coming within a milk shed or just beginning a new business who were not in business at the beginning of a license year.

"In 1953, under the provisions of Act No. 893, Acts of Alabama 1953, page 1199, provision was made for sale of these licenses by the judge of probate or a license commissioner of the various counties. Section 4 of Act No. 893 also provided for a quarterly reduction in the license of twenty-five percent in the same manner as had previously been provided in Section 214 of Title 22, *supra*. Section 7 of Act No. 893, *supra*, repealed provisions of Sections 214 and 215 of Title 22 pertaining to stores in conflict with the provisions of this act. Act No. 893, *supra*, was subsequently codified as Title 51, Section 553 (1) through Section 553 (6).

"In 1961, under the provisions of Act No. 497, Acts of Alabama 1961, page 579, the Legislature amended Sections 214 and 215 of Title 22, *supra*, so as to provide that, in newly-created milk sheds or where the territory has been extended, the license year shall commence as provided and persons newly affected thereby who are required to have license shall pay the same license fee required of persons engaged in the same type of activities. All persons commencing new businesses who were not in business at the beginning of the license year shall pay the same license fee, in the same amount and in the same manner as provided for new or extended milk sheds.

"Section 215 provides that a person operating a store or stores shall obtain a license for each store he operates and shall pay a license fee for each 'year or part of a year' in which such stores operated. Act No. 497 contained no repealer clause and, in codifying thereof, the same was made a part of the cumulative pocket supplement of Title 22 in the Recompiled Code of 1958. However, no reference or annotation was made in the cumulative pocket portion of Title 51 in the Code of Alabama Recompiled 1958. As a consequence, the judges of probate have continued to follow the quarterly reduction of milk store licenses and were apparently unaware of the amendments to Title 22, Sections 214 and 215, *supra*.

"I request your opinion as to whether or not judges of probate may continue to sell milk store licenses on a quarterly declining basis as authorized under the provisions of Act No. 893, Acts of Alabama 1953, page 1199, in view of the specific provisions of Act No. 497, Acts of Alabama 1961, page 579."

Repeal by implication of one statute of another is not favored by the courts and it is only when two laws are so repugnant to or in conflict with each other that it must be presumed that the Legislature intended the latter should repeal the former. **State v. Bay Towing and Dredging Co.**, 90 So. 2d 743, 265 Ala. 282.

Section 4, Act No. 893, Acts of Alabama 1953, page 1199 (Title 51, Section 553 (4)), reads, in pertinent part, as follows:

"The retail store license year hereunder shall begin October 1st and expire September 30th. In newly created milk sheds or in the milk sheds where the territory has been extended, the license year shall commence as hereinabove stated except that the persons newly affected thereby who are required to have a license shall pay a license fee which shall be reduced 25% for each fully elapsed quarter of the license year prior to the issuance of said license, provided, however, that no license fee for any period shall be less than 25% of the total. All persons commencing new businesses who were not in business at the beginning of the license year shall pay a license fee in the same amount and in the same manner as provided for new or extended milk sheds"

The primary purpose of Act No. 893, *supra*, as stated by you, was to allow sale of milk store licenses by the judges of probate or license commissioners of the various counties. Section 4 provided essentially in the same wording as the portions of Sections 214 and 215 of Title 22 cited by you for the quarterly reduction of the license of twenty-five percent in the same manner as had previously been provided in Sections 214 and 215, *supra*.

Section 5, Act No. 497, Acts of Alabama 1961, page 579, in amending Title 22, Section 214, Code of Alabama 1940, Recompiled 1958, provided, in pertinent part:

". . . In newly created milk sheds or in milk sheds where the territory has been extended, the license year shall commence as hereinabove stated and persons newly affected thereby who are required to have license shall pay the same license fee required of persons engaged in the same type of activities. All persons commencing new businesses who were not in business at the beginning of the license year shall pay the same license fee in the same amount and in the same manner as provided for new or extended milk sheds."

Section 6, Act No. 497, *supra*, in amending Section 215 of Title 22, *supra*, provides:

"A person operating a store or stores shall obtain a license for each store he operates and shall pay a license fee for each year **or part of a year** in which he operates such store or stores of two dollars and a half (\$2.50) for each store operated." (Emphasis supplied.)

The amended portions of Sections 214 and 215, above cited, supra, evidence the specific intent of the Legislature to eliminate the sale of milk store licenses on a quarterly reduction and, in my opinion, the provisions of these sections of Act No. 497, supra, are in specific and irreconcilable conflict with the provisions of Section 4, Act No. 893, supra.

I am, therefore, of the opinion that Section 4 of Act No. 893, insofar as the same authorizes the sale of milk store licenses on a quarterly reduction basis, is specifically repealed by the provisions of Act No. 497, supra, and the quarterly reduction of milk store licenses is no longer authorized.

Very truly yours,

MacDONALD GALLION
Attorney General

September 13, 1967

Honorable G. H. Wright
Mayor
City of Auburn
Auburn, Alabama

Mayor — Municipalities.

During the absence of the Mayor from a city of 12,000 inhabitants, the president of the council shall act as mayor pro tempore with the power and authority of the mayor.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated August 7, 1967, is as follows:

"As Mayor of the City of Auburn, I request your opinion in the following matter.

"The City of Auburn was made a respondent in a case pending in the Lee County Circuit Court involving certain rights-of-way for streets and sanitary sewers. In a settlement of this case out of court, an agreement was drawn up and the City Council of Auburn adopted a resolution approving this settlement and the resolution provided that the Mayor sign the agreement on behalf of the City. As Mayor of the City of Auburn, I felt that a bad precedent was being set by the terms of the agree-

ment and that the City should not make the expenditures provided for in the agreement to pay for the public improvements to be installed in the rights-of-way to be obtained by the City. I so expressed my opinion and refused to sign the agreement.

"A few days later, I left the city on vacation and on the following Tuesday, the City Council requested the President of the City Council to assume the office of Mayor Pro Tempore, which she did and so served until my return to the City the following weekend. During this time, she executed the subject agreement as Mayor on behalf of the City. I am advised that she assumed the office under the provisions of Title 37, Section 428 of the Code of Alabama 1940, as amended and revised.

"My question to you, is did she have the authority to so act in my absence from the City, and is the agreement of settlement of the court case binding upon the City so that expenditures may be made to carry out the terms of the agreement?"

A municipality is a public corporation which may sue and be sued. Title 37, Section 1, Code of Alabama 1940. Its legislative powers and the authority to manage and control its finances and property are vested in the municipal council by Title 37, Section 429, Code of Alabama 1940, as amended by Act No. 666, Acts of Alabama 1961, page 910.

The City of Auburn has a population of 16,261 inhabitants according to the 1960 federal decennial census.

Title 37, Section 428, Code of Alabama 1940, as amended by Act No. 666, *supra*, reads, in part, as follows:

"In case of the absence of the mayor from a city of twelve thousand or more inhabitants, or his inability to serve on account of sickness or any other good reason, the president of the council, or the president pro tempore of the council in case of absence or disability of the president of the council, shall act as mayor pro tempore with the power and authority of the mayor during such time. . . ."

I am of the opinion that the quoted portion of Section 428, as amended, *supra*, authorized the president of the council of the City of Auburn to assume the duties of your office during the period of your absence from the City and to execute as mayor pro tempore the agreement to which your request refers in accordance with the resolution of the council.

Therefore, your question is answered in the affirmative.

Very truly yours,

MacDONALD GALLION
Attorney General

September 25, 1967

Honorable Guy D. Roberts
Chairman

Morgan County Board of Revenue
and Control
Decatur, Alabama 35601

Bids — Contracts — Counties — Morgan County —
Statutes.

1. Act No. 217, Special Session 1967, repeals all general, special or local acts in conflict with the provisions of that act. Those provisions of former general, special or local acts which are not inconsistent with the provisions of Act No. 217, *supra*, remain in full force and effect where applicable.

Opinion by Assistant Attorney General Webb.

Dear Sir:

I have your letter of August 11, 1967, in which you request my opinion as follows:

"Reference is made to Act No. 129, approved March 9, 1939, Local Acts of Alabama 1939, page 70, as amended, which created the Board of Revenue and Control of Morgan County, Alabama. It will be noted that Section 7 of said Act requires the taking of sealed bids on all purchases, regardless of the amount involved, of the items therein enumerated and details the procedure to be followed. For all practical purposes said Section applies to all purchases with the exception of those made under the provisions of Section 11 of said Act, as amended, which gives each Member of the Board authority in emergencies, and in cases where work on roads within his district would otherwise be unduly delayed, to make purchases not to exceed \$500.00. Section 11 of said Act was last amended by Act No. 537, approved August 23, 1961, Acts of Alabama 1961, page 634.

"Act No. 217, Acts of Alabama, Special Session 1967, establishes a uniform competitive bid law or system throughout the State but applies only to purchases of five hundred (\$500.00) dollars or more. In an opinion to Honorable J. O. English, Judge of Probate, Coffee County, Elba, Alabama, dated July 17, 1967 you held that Act 217, *supra*, superseded or repealed the provisions of the local act in said County which required the Commissioners Court to obtain three bids, where possible, for the purchase of items of \$200.00 or more. It would appear under this ruling that the provisions of the Morgan County local act, above referred to, are repealed insofar as purchases under five hundred (\$500.00) dollars are concerned even though said local act carries out the obvious purpose and intent of the legislature in enacting Act 217, *supra*, in a more restrictive manner.

"Until the ruling to the Honorable J. O. English, above referred to, it was felt that the provisions of Act No. 129, supra, dealing with the method and procedures to be followed in making purchases, including those under \$500.00, and also other related matters, would remain in full force and effect unless they were in conflict with the provisions of Act 217, supra. In view of this ruling, however, uncertainty now exists as to what provisions, if any, of Section 7 and related sections of said Act 129, supra, as amended, are still in full force and effect. Therefore, your official opinion is respectfully requested as follows:

"1. Does Act 217, supra, repeal that part of Act No. 129, as amended, supra, which requires the obtaining of sealed bids for purchases under \$500.00?

"2. Are the provisions of Section 7 of Act 129, supra, dealing with the authority, manner and procedure to be followed in making purchases repealed by the provisions of Section 2 of Act 217, supra, which require the county governing body to establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purposes of said Act?

"3. If your answer to question number 2 is in the affirmative, please advise whether it will be necessary to set up a separate purchasing department and if so, does the Board of Revenue and Control of Morgan County have authority by appropriate resolution to establish the department, promulgate the necessary rules and procedure for it to follow so as to comply with Act 217, supra, and to expend county funds to pay the salaries and expenses of such facility?

"4. If your answer to question number 2 is in the negative, then please advise whether the Board of Revenue and Control can substantially comply with the provisions of Act 217, supra, if it continues to follow the provisions of Section 7 of Act 129, as amended, supra?

"5. Does Act 217, supra, repeal the alternate provision contained in Section 10 of Act No. 129, supra, which provides for the Board of Revenue and Control of Morgan County to enter into contracts for the purchase of gasoline, fuel, oil, etc., upon such terms as it may desire, provided such contracts are procured in the manner provided in Section 7 of said Local Act?

"6. Does Act 217, supra, repeal the provisions contained in Section 9 of Act No. 129, supra, which gives the Board of Revenue and Control the right by resolution to fix rates for the rental or hire of trucks to be used in connection with work on the public roads in the County and which further provides that after such resolution has been adopted each member shall have authority to rent or hire trucks as may be necessary to properly perform the work on the public roads within his district at a rental not to be at a rate in excess of that fixed in said resolution of the Board?

"7. Does Act 217, supra, repeal the provisions of Section 11 of Act No. 129, supra, which authorizes each member of the Board in emergencies or in cases where work on the roads within the member's district would otherwise be unduly delayed, to purchase such materials and equipment as may be needed to properly perform the work on the roads in an amount not to exceed \$500.00?

"8. If your answer to question number 7 is in the negative, then please advise whether or not the provisions of Act 217, supra, would be violated if two or more members of the Board of Revenue and Control, acting under the authority of Section 11 of Act No. 129, supra, made purchases on the same day or within a period of several days, the total cost of which exceeded \$500.00?"

Your first question, as noted by you, has been previously answered by this department in an opinion of the Attorney General to Honorable J. O. English, Judge of Probate, Coffee County, under date of July 17, 1967, a copy of which is enclosed. I have reviewed carefully the provisions of Act No. 129, Local Acts of Alabama 1939, page 70, with amendments thereto, and I am of the opinion that the same ruling as applied to Coffee County would also be applicable to the provisions of Act No. 129 on Morgan County and that no bids would be required for purchases under \$500.00.

I answer your second question in the negative. I find no apparent conflict between the provisions of Section 7, Act No. 129, supra, and Act No. 217, Special Session 1967, with the exception that, first, all purchases, leases, etc., involving \$500.00 or more, with the exception of those noted specifically in Act No. 217 are now covered, and I also note, second, that no provision is made in Section 7, supra, for notification of parties who have requested to be notified as is required under Act No. 217, supra. The provisions of Act No. 217, therefore, would be controlling in those two instances. Specifically otherwise though as to manner and procedure, I am of the opinion that the board may follow the provisions of Section 7, Act No. 129, supra, and that no further purchasing facilities or procedures need be established to carry out the intent and purposes of Act No. 217, supra.

Your second question having been answered in the negative, your third question is, therefore, inapplicable.

I answer your fourth question in the affirmative with the exceptions noted in my answer to your second question.

As to your fifth question, it is my understanding, after reading Section 10 of Act No. 129, supra, that the provisions of this section simply allow, in effect, delivery type contracts and other features to be made in contracts for purchase of gasoline, fuel, oil, and tires, provided that such contracts are procured in the manner provided for under Section 7 of Act No. 129, supra, with the exception of the limitation of one year, as now contained under the provisions of Act No. 217, supra, and

those notations made in my answer to your second question above, I answer your fifth question in the negative. In this regard, note also my opinion to Honorable Ralph P. Eagerton, Chief Examiner of Public Accounts, under date of August 21, 1967, a copy of which is attached.

As noted by you, Section 9 of Act No. 129, *supra*, purports to give to the Board of Revenue and Control of Morgan County the exclusive right by resolution to fix the rates of rental and hire of trucks without conformity to bid or otherwise. Act No. 217, specifically requires bids on lease of equipment involving \$500.00 or more. I, therefore, answer your sixth question in the affirmative.

I answer your seventh question in the affirmative. Section 11 of Act No. 129 purports to authorize each member of the board in emergencies or in cases where work on the roads within the member's district would otherwise be unduly delayed to purchase such materials and equipment as may be needed to perform the work on the roads in an amount not to exceed \$500.00. Act No. 217, *supra*, however, specifically requires bids for any purchase of \$500.00 or more. In this regard, also note my opinion to Honorable N. E. Dixon, President, Board of Revenue, Marengo County, under date of July 20, 1967, a copy of which is enclosed. In that opinion it was pointed out that no purchase or contract shall be divided into parts to avoid competitive bidding by issuing separate purchase orders or contracts for each individual district of a county. You will note, however, that under the provisions of Section 7, Act No. 217, *supra*, emergency purchases affecting public health, safety, or convenience so declared in writing may be let to the extent necessary to meet the emergency without public advertisement. As stated in my opinion to Honorable Ralph P. Eagerton, *supra*, the question of emergency addresses itself primarily to the sound discretion of the awarding authority subject, of course, to review involving matters of gross breach of this discretion. In this regard, you might note also the annotations contained in 53 ALR 2d 514, et seq., and 43 Am. Jur., Public Works Contracts, Section 31, page 772. What constitutes an emergency within the meaning of Act No. 217, *supra*, depends upon the special circumstances in each case. Generally, however, the term "emergency" signifies a situation which has suddenly and unexpectedly arisen and which requires speedy action, some unexpected necessity requiring immediate or at least quick action. Some examples held to be emergencies are: overflow of polluted waters into the public water sources, war, etc. Roads, bridges and streets are generally not considered to be constituted emergencies unless they are in such a dangerous condition as to actually constitute an immediate threat to life or property.

My answer to your seventh question having been in the affirmative, your eighth question is not applicable.

Very truly yours

MacDONALD GALLION
Attorney General

September 26, 1967

Honorable Robert M. Cleckler
Superintendent of Banks
State Banking Department
C A P I T O L

Banks and Banking — Savings and Loan Associations.

State Chartered Savings and Loan Associations are permitted to issue shares paying a differential or variable dividends in the same manner as Federal Savings and Loan Associations operating in Alabama.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of September 19, 1967, is as follows:

"Request is made in behalf of the Alabama Bureau of Savings and Loans that you clarify and perhaps enlarge upon your opinion of April 17, 1962, in which you stated that the legislative intent of Title 5, Section 260-261, was to grant state associations all rights and privileges held by federal associations. "One of our associations (Guaranty Savings and Loan Association) has in accord with a directive of the Federal Home Loan Bank Board Resolution F.S.L.I.C.—2, 748 and limiting its officers authority to the express terms of the Federal directive, authorized by its By Laws the issuance of shares paying a differential or variable dividends.

"Mr. Albert E. Conradis, Chief, Legal Review Staff of the Federal Home Loan Bank Board in a thoughtful analysis of the Guaranty's position questions:

"(a) Whether the provision of Title 5, Section 225, providing that dividends shall be payable to all shareholders 'equally' is superceded by the subsequent Title 5, Section 260 and 261.

"Since Title 5, Section 260 and 261, was based on a subsequently passed Legislative Act (1945, Paragraph 1), we think the answer obvious.

"(b) Whether the word 'equal' if not superceded as above may be by you construed to mean 'equal within the class.'

"To answer this also seems obvious as above or by the plain interest of the Legislature.

"Thanking you and with the assurance that a wide and general interpretation will enable our state associations to better compete, I am"

Title 5, Section 225, Code of Alabama 1940, provides, in part, as follows:

“§ 225. Dividends . . . All accountholders shall participate equally in dividends pro rata to the participation value of their respective accounts;”

Act No. 120, General Acts 1945, page 113, approved June 16, 1945 (Title 5, Section 260, 261, Code of Alabama 1940, Recomplied 1958), provides as follows:

“Section 1. That any Savings and Loan Associations now or hereafter organized under the laws of this State is hereby empowered, on the authority of its Board of Directors, or a majority thereof, to enter into such contracts, incur such obligations, and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to Savings & Loan Associations or to their members, creditors, conservators, receivers, or liquidators by virtue of the provisions of any Federal statute which established the Federal Home Loan Bank or the Federal Savings & Loan Insurance Corporation and provided for the insurance of accounts of any Savings & Loan Association, or of any other provision of that or any other Act or resolution of Congress to aid, regulate, or safeguard Savings & Loan Associations and its members including any amendments to the same or any substitutions therefor; also to subscribe for and acquire any stock, debentures, bonds, or other types of securities of the said Corporation and to comply with the lawful regulations and requirements from time to time issued by such Corporation.

“Section 2. That any Savings & Loan Association which is organized under and by virtue of applicable statutes of the State of Alabama and operating under the laws of the State of Alabama may make any contract, loan, or investment which such Association could make were it incorporated and operating as a Federal Savings & Loan Association with its domicile in this State.

“Section 3. That all laws and parts of laws in conflict with the provisions of this Act are hereby expressly repealed.

“Section 4. That this Act shall take effect immediately upon its passage and approval by the Governor.

“Approved June 16, 1945.”

If Section 225, *supra*, is to be strictly construed, it would prohibit the issuance of shares paying a differential or variable dividend.

The legislative intent of Act No. 120, *supra*, was to give to the State laws governing savings and loan associations that degree of flexibility

necessary to compete with like federal associations. And while it did not specifically repeal Section 225 at that time, it is now apparent that a restriction of payment of dividends equally pro rata to the participation value of their respective accounts would nullify that flexibility.

Where there is conflict in two acts the provisions of the later act govern. Quarterly Report of Attorney General Vol. 95, page 41.

The issuance of shares paying a differential or variable dividend is probably based on issuance of a larger share to remain on deposit for a stated time similar to a certificate of deposit.

The amendment to Section 6 of the bylaws of Guaranty Savings and Loan Association of Birmingham, Alabama would be permitted under F.S.L.I.C.-2,748 and therefore, is permissible under Act No. 120, supra.

In my opinion, Question (a) should be answered in the affirmative as to this type of amendment to its bylaws.

As State Chartered Associations may classify accounts for the purpose of paying a differential or variable dividend to the same degree that a Federal Savings and Loan Association may do, the suggested "equal within the class" participation appears applicable to this amendment.

Yours very truly,
MacDONALD GALLION
Attorney General

September 26, 1967

Honorable Walter S. Houseal
Superintendent of Insurance
State of Alabama
C A P I T O L

Insurance — Expenses — Superintendent of Insurance.

Title 28, Section 47(9), Subsections 13 and 54(1), Code of Alabama 1940, as amended.

Automobile may be purchased for use of Superintendent of Insurance in accordance with provisions of Title 28, Section 54(1), Code of Alabama 1940, as amended.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of September 13, 1967, is as follows:

"Title 28, Section 54(1) Code of Alabama, 1940, provides for the payment of expenses incurred by the Department of Insur-

ance or the employees thereof in the examination of insurance companies, mutual aid, fraternal benefit associations, reciprocal exchanges, or other insurance corporations to be paid from a special revolving fund in the State Treasurer, which said fund is composed of fees and expenses received from said companies pursuant to Title 28, Section 47, Code of Alabama 1940.

"I should like your opinion as to whether an automobile may be purchased for the use of the Superintendent of Insurance and be paid from this revolving fund rather than the general appropriation of the legislature made to this department. Among his powers and duties, the Superintendent shall examine or cause to be examined all domestic and foreign insurance companies, mutual aid, fraternal benefit associations, reciprocal exchanges, or other insurance corporations qualified in this state as required by law, and perform all the duties of the department which relate to the supervision, regulation and control of the business of insurance.

"It is often necessary that during the examination of an insurance company, or at the close of the examination, the Superintendent of Insurance is required to visit with the examiners or with the company officials in the home office of the insurance company being examined to discuss the examination."

Title 28, Section 54(1), Code of Alabama 1940, as amended, provides as follows:

"§ 54(1). Expenses of examination paid from revolving fund.—The expenses incurred by the department of insurance or the employees thereof in examining insurance companies, mutual aid and fraternal benefit associations, reciprocal exchanges, or other insurance corporations, as required or authorized by law, shall be paid from a special revolving fund in the state treasury, which shall be composed of the sums paid by, or collected or received from such companies, associations, exchanges, or corporations for such purpose, as prescribed by section 47(9) of this title."

Title 28, Section 47(9), Code of Alabama 1940, as amended, sets out the powers and duties of the Superintendent of Insurance. Subsection 13 of Section 47(9) provides as follows:

"§ 47(9). Powers and duties of superintendent.—The superintendent of insurance shall have the power, and it shall be his duty, to: . . . (13) examine, or cause to be examined all domestic and foreign insurance companies, mutual aid, fraternal benefit associations, reciprocal exchanges, or other insurance corporations qualified in this state as required by law; and set a reasonable per diem, subsistence and travel allowance for such examiners or other persons designated by the superintendent of insurance for such purpose. All insurance companies, associations, societies, reciprocal exchanges or any other insurance

concern examined under this section shall pay all expenses incurred in such examination;"

Monies so collected are put into a special revolving fund for payment of expenses incurred by the Department of Insurance or the employees thereof in examining insurance companies.

Since examination of insurance companies is one of the principal duties of the superintendent and one that is necessary in the regulation and supervision of the insurance industry in Alabama, and as furnishing him an automobile is an expense incurred therein by the department, it is the opinion of this office that such an automobile may be purchased for the use of the Superintendent of Insurance and be paid from the revolving fund provided for by Title 28, Section 54(1), *supra*.

Yours very truly,

MacDONALD GALLION
Attorney General

September 28, 1967

Honorable Bradley Brown, Director
Department of Revenue
Jefferson County Courthouse
Birmingham, Alabama 35203

Motor Vehicle License Taxes — Trucks and Truck Tractors
—Leased Vehicles.

1. Title 51, Section 697, Code of Alabama 1940, as amended by Act No. 223 of the 1967 Special Session and Act No. 580 of the 1967 Regular Session, includes within the schedules provided for under Subsection (b) of Section 697 leased vehicles, namely, trucks and truck-tractors "operated under any rental, lease or agreement where compensation is charged for the use of such vehicle," and the license would be due by the lessor based on the schedules contained in Subsection (b) of Section 697, as amended, *supra*.
2. The so-called "for-hire license tag law" under Act No. 672 of the 1961 Regular Session of the Legislature, and said act as amended (Pocket Part, Title 51, Section 697 (1), Code of Alabama 1940, Recomplied 1958), has been repealed outright by said Act No. 223 of the 1967 Special Session, *supra*, and there is no longer a license tax or tag law which relates only to "trucks and truck-tractors for hire," and the title to what was Act No. 672, prior to said act being repealed, is no longer relevant nor can it be considered.

3. Trucks and truck-tractors "with more than two axles when a single unit and each truck or truck-tractor used in combination with a trailer or semi-trailer which are used on the public highways of this state to transport goods, wares, merchandise, or commodities of any kind or nature for compensation of any kind," which were licensed as "for-hire trucks" under Act No. 672, which has been repealed, now come within the scope of Section 697, as amended, Title 51, *supra*, and are subject to be licensed under the schedules contained in Subsection (b) of said Section 697, as amended.

Opinion by Assistant Attorneys General Livingston and Burton.

Dear Sir:

Your request for an official opinion from this office bearing date of September 13, 1967, is as follows:

"Act No. 223, passed in the Special Session of 1967, and Act No. 580 (HB No. 496), passed in the Regular Session of 1967, each amended several sections of Title 51, Code of Alabama, including Section 697. The title to these two new acts, particularly the title to Act No. 223, is much more comprehensive and broader than the title to Act No. 672, page 922, 1961 Regular Session Acts, as a consequence, we are having numerous inquiries as to whether or not subsection (b) of Section 697, as amended by Act No. 223 above mentioned, and as further amended by Act No. 580 of the 1967 Regular Session, would apply to a lessor who leases a vehicle to a lessee to carry his own goods or products.

"As it is only approximately two weeks before we commence issuing 1968 plates, I would appreciate your official opinion on the above at the earliest possible convenience."

Your question then is whether or not under Act No. 223 of the 1967 Special Session, and Act No. 580 of the 1967 Regular Session, which amend Section 697 of Title 51, Code 1940, and which repeal in its entirety the for-hire truck tag law under Act No. 672 of the 1961 Regular Session, and said act as amended, would include within the schedule of licenses under Subsection (b) of Section 697, as so amended, trucks and truck-tractors where leased for compensation and which are used by the lessee to transport his own property on the highways of this State?

Your question is answered in the affirmative, and to the effect that such leased trucks and truck-tractors appear to be expressly included within the class of trucks and truck-tractors described in subsection (b) of Section 697, as so amended, and are subject to the licenses provided for in the schedule contained in Subsection (b), *supra*.

In answering your question, however, it is well to consider the historical background of the license tax schedules relating to trucks

and truck-tractors which are used for various purposes on the highways of this State.

Prior to October 1, 1961, the effective date of Act No. 672 of the 1961 Regular Session [Acts of Alabama 1961, Vol. I, page 922; Pocket Part, Code of Alabama, Title 51, Section 697 (1)], all trucks and truck-tractors including those used on the public highways for compensation or for any purpose, were licensed on the basis of the manufacturer's rated capacity and on the graduated scales, according to weight, as provided for in the schedule contained in Title 51, Section 697, Code of Alabama 1940. Under Act No. 672, supra, effective October 1, 1961, and in lieu of the mileage tax, which was repealed, a separate and distinct license tax was set up and provided for "trucks and truck-tractors, trailers and semi-trailers **operated for hire**," which took trucks and truck-tractors operated for hire out of the license schedules provided in Section 697, supra. Act No. 672, supra, was designated by Michie as Section 697 (1), Title 51, Code of Alabama 1940, (Recompiled 1958). Thus the license schedule said to apply to trucks and truck-tractors, etc., "operated for hire," was separated from the regular truck license tax schedule under Section 697 of Title 51, supra, and was put by Michie in a separate Code Section, and was treated as a separate and distinct license.

The title to Act No. 672, supra, commonly referred to as the "for hire truck tag law," read as follows:

"To revise the privilege license schedules relating to the registration of trucks, truck-tractors, trailers, semi-trailers **operated for hire**, repealing conflicting laws." (Emphasis Supplied)

Section 1 (a) of Act No. 672, provided in material part as follows:

"Each motor truck operated for hire * * *, shall pay a license tax in accordance with the following schedules, based on maximum gross vehicle weight * * *."

Section 1 (b) of Act No. 672, supra, was amended by Act No. 591 of the 1963 Regular Session, to read in material part, as follows:

"(b) Trucks and Truck-Tractors For-Hire.—Motor trucks and truck-tractors with more than two axles when a single unit, and all tractors-semi-trailer or truck-trailer combinations which are used to transport goods, wares, merchandise, or commodities of any kind or nature for compensation of any kind, or **operated under any rental, lease, or other agreement where compensation is charged for the use of such vehicle**, except trucks used for the transportation of household goods, personal furniture, or other household effects, and motor vehicles used for the transportation of coal, iron ore, limestone, bauxite, sand and gravel, and except motor vehicles used in the transportation of commodities exempt under the Alabama Motor Carrier Act of 1939, as amended, either directly or indirectly, shall pay the following licenses: [here follows the graduated scale of the license tax based on gross vehicle weight in pounds.]" (Emphasis Supplied)

In the case of **Brown v. National Motor Fleets, Inc.**, 276 Ala. 493, 164 So. 2d 489 (1963), the Supreme Court of Alabama in the first instance, and on appeal, and with the opinion by the Chief Justice, reversed the trial court's decree, by holding that Act No. 672, *supra*, under the provisions of Subsection (b) of Section 1, which are underscored above, included within its scope and license schedule trucks and truck-tractors leased for compensation which were operated on the highways of this State by the lessee in hauling his (the lessee's) own property. On rehearing, however, the Court reversed its previous holding, with the Chief Justice and one of the Associate Justices dissenting.¹

In reversing its first holding and in granting rehearing the Court held that the title to Act No. 672 was not broad enough to include leased vehicles, which were used by the lessee to haul his own property, in that the title to the act was said to be confined to trucks, etc., "**operated for hire.**" Moreover, the Court in granting the rehearing pointed out that it had in two former decisions,² in construing Section 1 of the Mileage Tax Act of 1939, Title 48, Sections 301 (1), et seq., Code of Alabama 1940 (Recompiled 1958), held that a leased vehicle operated by the lessee to haul his own property was not a motor vehicle operated for hire under the definition of a "motor carrier" in the Mileage Tax Act. The Court also said in this respect that the same would be true, in determining what was a for-hire truck or truck-tractor under Act No. 672, *supra*, even though the Mileage Tax Act, insofar as it is related to trucks and truck-tractors for hire, had been repealed in 1961. See **Brown v. National Motor Fleets, Inc.**, *supra*, 164 So. 2d at page 491.

¹See dissenting opinion (**Brown v. National Motor Fleets, Inc.**, *supra* 164 So. 2d at pages 491-493), which was the majority opinion in the first instance on appeal.

²**State v. Hotz G. M. C. Trucks, Inc.**, 268 Ala. 120, 105 So. 2d 98, and **Haden v. Rhodes and McLeod**, 271 Ala. 344, 123 So. 2d 916.

The Court in the same opinion also recognized that the Legislature had in Subsection (b) of Section 1 of Act No. 672 attempted to include within the scope of the for-hire truck license tax act leased vehicles used by the lessee to haul his own property by using the words, "or operated under any rental, lease, or other agreement where compensation is charged for the use of such vehicle." However, in the majority opinion the Court said that the title to Act No. 672, *supra*, was not broad enough to include such leased vehicles, even though they were included in the body of the act. The Court stated this in the following language:

"The fact that Section (b) in the body of the Act purports to enlarge the definition of 'for hire' is inefficacious to render the appellee liable for the license since the enlarged definition is directly conflictory with the Title of the Act which gives no notice of this broad definition and, as to this appellee, the enlargement of the definition contains more than one subject and would be unconstitutional under Section 45."

See 164 So. 2d at page 490.

The Court then went on to hold as follows:

"We are at the conclusion that the Act is broader than the Title and, therefore, that part which is within both the Title and the body of the Act will stand, while that part not indicated by the Title will fall."

See 164 So. 2d at page 491.

Act No. 223 of the 1967 Special Session, *supra*, expressly repeals in its entirety Act No. 672, *supra* (the for-hire license tax law as to trucks, etc.). In lieu thereof, the Legislature has under Act No. 223 and Act No. 580, amended the regular truck license tax law under Title 51, Section 697, Code of Alabama 1940 (Recompiled 1958), to again include within the purview of Section 697 all trucks, including trucks and truck-tractors for hire, without referring specifically to them by name.

Section 697, *supra*, as amended by Act No. 223, *supra*, has the following title:

"To make further provisions respecting license and registration fees **on motor vehicles and trailers**, including provisions respecting the disposition of the proceeds of the said licenses and fees provisions respecting remittances by the judges of probate of the said proceeds, and provisions as to the amount of the said licenses and fees on **certain motor vehicles**; and to those ends, to amend Sections 692, 693, 695, 696, 697, 703, 712, and 713 of Title 51 of the Code of Alabama of 1940 and to repeal Sections 698, 699, and 700 of the said Title 51 and all other statutes in conflict with this act." (Emphasis Supplied)

The title to Act No. 580, *supra*, which further amends Section 697 of Title 51, *supra*, reads as follows:

"An Act, To amend further Title 51, Sections 692, 697 and 703, Code of Alabama 1940, **so as to make further provisions respecting licenses and registration fees on motor vehicles and trailers.**" (Emphasis Supplied)

Under Section 697 as now amended by Acts Nos. 223 and 580, truck tractors other than those subject to the license under the schedule contained in Subsection (b) of Section 697, as amended, are subject to the license tax on owner declared gross vehicle weight under the schedule in Subsection (a). Subsection (b) of Section 697, as last amended by Act No. 580, *supra*, provides for the licensing under the schedule contained therein of the following described trucks and truck-tractors:

"(b) For each truck or truck-tractor with more than two axles when a single unit and each truck or truck-tractor used in combination with a trailer or semi-trailer which are used on public highways of this State to transport goods, wares, merchandise, or commodities of any kind or nature for compensation of any kind, **or operated under any rental, lease or other agreement where compensation is charged for the use of such vehicle,**

except trucks used for the transportation of household goods, personal furniture, or other household effects, and motor vehicles used for the transportation of coal, iron ore, limestone, bauxite, sand and gravel, and except motor vehicles used in the transportation of commodities exempt under the Alabama Motor Carrier Act of 1939, as amended, either directly or indirectly, shall pay the following licenses: * * *." (Emphasis Supplied)

Due to the outright repeal of Act No. 672 by Act No. 223, supra, the for-hire truck license tag law as such has been done away entirely by the Legislature, and with it went the title to Act No. 672, supra, which formed the basis of the decision of the Alabama Supreme Court on rehearing in **Brown v. National Motor Fleets, Inc.**, supra.

All trucks and truck-tractors effective on October 1, 1967, will be licensed (as they previously were prior to 1961) under Section 697, supra. The schedules covering trucks and truck-tractors as are contained in Subsections (a) and (b) of Section 697 of Title 51, as that Section has been amended by Act No. 223 of the 1967 Special Session and Act No. 580 of the 1967 Regular Session, are applicable to all trucks and truck-tractors. There is now no separate license statute covering specifically and by name trucks and truck-tractors operated for hire.

Section 697 as amended by Acts Nos. 223 and 580, supra, applies to "each truck or truck-tractor" without the mention of any special category being specifically designated as for-hire trucks or truck-tractors for the purpose of the schedules contained in Subsections (a) and (b). However, the provisions under Subsection (b) of Section 697, as amended, covering "each truck or truck-tractor with more than two axles when a single unit and each truck or truck-tractor used in combination with a trailer or semi-trailer which are used on public highways of this state to transfer goods, wares and merchandise or commodities of any kind or nature for compensation of any kind" would very clearly include within such definition trucks and truck-tractors used to haul property for hire, where they would otherwise fit within the definition.

The Supreme Court of this State in granting the rehearing in the **Brown** case (164 So. 2d at page 490), recognized that it was the intent of the Legislature to include even within the scope of Act No. 672 trucks or truck-tractors "operated under any rental, lease or other agreement where compensation is charged for the use of such vehicle," as manifested by the body of the Act, but that as the title to Act No. 672 confined the license to "trucks (and) truck-tractors * * * operated for hire," and as said leased trucks in the opinion of the majority did not meet the definition of for-hire trucks, Section 45 of the State Constitution was said to forbid them from being included in said act as truck-tractors or trucks for hire. The Court then because of said alleged conflict between the title and the body of Act 672 in effect eliminated leased trucks from that act.

We have no such complications involved as to Section 697 as amended by Acts Nos. 223 and 580, supra. Section 697, as so amended,

now applies to all of the trucks described in Subsections (a) and (b) thereof. The title to the main amendment, Act No. 223, supra, simply provides for the licensing of "motor vehicles and trailers." There can be no argument that the leased trucks as described under Subsection (b), supra, are not "motor vehicles."

It is noted that the title to Act No. 580, supra, purports to amend Title 51, Section 697 (and Sections 692 and 703 of Title 51), "**so as to make further provisions respecting licenses and registrations on motor vehicles and trailers.**" In this respect the Supreme Court of Alabama has held on numerous occasions that an amendment of a section of the Code under a title of an act which refers to sections to be amended by number is permissible if the sections relate to a single subject and the matters brought in by the amendment are germane to law as expressed in the original section. See Section 45 of the Constitution of Alabama of 1901 and the annotations thereunder, pages 124-128 of Vol. I, Code of Alabama 1940 (Recompiled 1958).

Very truly yours,
MacDONALD GALLION
Attorney General

I N D E X

**QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE
PERIOD FROM JULY 1, 1967 THROUGH SEPTEMBER 30, 1967.**

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